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PUBLICATIONS OF THE MINNESOTA ACADEMY OF SOCIAL SCIENCES

Vol. III, No. 3 General Topic—Municipal Government \$2.00 Per Volume

PAPERS AND PROCEEDINGS
OF THE
THIRD ANNUAL MEETING
OF THE
Minnesota Academy of
Social Sciences

EDITED BY
WILLIAM A. SCHAPER

PUBLISHED FOR THE ACADEMY
By the Index Press
1910

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Minnesota Academy of Social Sciences

The Minnesota Academy of Social Sciences

The people of a commonwealth can advance toward better conditions of government and more efficient administration only as public opinion grows more enlightened. Such public opinion is formed largely through the medium of the press, the schools, and associations organized to discuss questions of importance. With a view to providing a medium through which men may confer together upon important political, social, economic, and historical questions affecting the life of the state, the Minnesota Academy of Social Sciences has been organized.

It is believed that the influence of an organization whose members consist of persons interested in these questions would count much toward the formation of sound and rational doctrine relating to legislation and the social and industrial welfare of the people of Minnesota. It is equally certain that the publication of the papers presented at the annual meetings of the organization would stimulate thought upon these questions and that a journal would serve as a suitable means of communication between those interested in the public questions coming up from time to time in the state.

The absence of any state association dealing with these phases of social life suggests the creation of an association that would be state-wide and open to persons interested in these subjects. It needs no argu-

ment that the existence of such an organization with annual and special meetings held in the different towns and cities of the state, and the publication of a journal devoted exclusively to matters interesting the citizens of Minnesota, would furnish a nucleus for an enlargement of public opinion on many questions.

To this end the Academy was organized in April of 1907, a constitution drafted and officers elected. The first annual meeting was held at the University of Minnesota, December 5 and 6, 1907.

The papers and proceedings of the first annual meeting were published in 1908 under the subtitle Taxation. The second annual meeting considered papers relating to the commonwealth of Minnesota, published in volume II. The third annual meeting dealt with some problems of Municipal Government.

CONSTITUTION

I. NAME

The name of this organization shall be the Minnesota Academy of Social Sciences.

II. OBJECTS

(a) The encouragement of the study of economic, political, social and historical questions particularly affecting the state of Minnesota.

(b) The publication of papers and other material relating to the same.

(c) The holding of meetings for conference and discussion of such questions.

III. MEMBERSHIP

Any person approved by the executive committee may become a member of the Academy upon payment of two dollars and after the first year may continue a member by paying an annual fee of two dollars.

IV. OFFICERS

The officers shall consist of a president, three vice-presidents, and a secretary-treasurer.

V. STANDING COMMITTEES

The committees of the Academy shall consist of an executive committee, a publication committee, and such others as may from time to time be required.

The executive committee shall consist of the officers of the organization and three elected members.

The publication committee shall consist of six persons appointed by the president.

The officers and members of committees shall hold their positions for one year.

VI. DUTIES OF OFFICERS AND COMMITTEES

The duties of the officers shall be such as usually pertain to such positions. The executive committee shall have charge of the general interests of the Academy. It shall have power to determine the time and place of meetings.

The publication committee shall have charge of the publications of the Academy.

VII. AMENDMENTS

Amendments, when approved by the executive committee, may be adopted by a majority vote of members present at any meeting of the Academy.

OFFICERS FOR 1910

PRESIDENT

JUDGE DAVID F. SIMPSON, Minneapolis.

VICE-PRESIDENTS

DR. A. C. ROGERS, Faribault.

PROF. WILLIS M. WEST, Minneapolis.

JUDGE FRANK T. WILSON, Stillwater.

SECRETARY-TREASURER

PROF. WILLIAM A. SCHAPER, Minneapolis.

ELECTED MEMBERS OF THE EXECUTIVE COMMITTEE

THOMAS A. POLLEYS, St. Paul.

EUGENE T. LIES, Minneapolis.

REV. JOHN A. RYAN, St. Paul.

PUBLICATION COMMITTEE

PROF. EDWARD V. ROBINSON, Minneapolis.

PROF. A. B. WHITE, Minneapolis.

DR. A. O. ELIASON, Montevideo.

HON. ALVAH EASTMAN, St. Cloud.

PROF. H. J. FLETCHER, Minneapolis.

C. O. A. OLSON, Minneapolis.

COMMITTEE ON LEGISLATION

HON. FRANK N. STACY

JUDGE DAVID F. SIMPSON

LOUIS BETZ

PROF. HENRY J. FLETCHER

PROF. EDWARD V. ROBINSON

The Third Annual Meeting

The third annual meeting of the Minnesota Academy of Social Sciences was held in the auditorium of the Law School of the University of Minnesota, Thursday and Friday, December 2 and 3, 1909. The program carried out was as follows:

PROGRAM

GENERAL SUBJECT—MUNICIPAL GOVERNMENT
PRESIDENT POLLEYS, Presiding

FIRST SESSION

THURSDAY EVENING, DECEMBER 2ND, AT 8:00 P. M.
THE BASIS OF MUNICIPAL GOVERNMENT

The Citizen as a Member of the Municipality—Mr. T. A. Polleys, President of the Academy, St. Paul

The Charter Problem in Minnesota—Dr. Wm. A. Schaper, Professor of Political Science, University of Minnesota

Discussion:

Mr. Stiles P. Jones, Sec'y Voters League, Minneapolis

Judge F. T. Wilson, Stillwater

Hon. F. N. Stacy, Deputy Public Examiner, St. Paul

SECOND SESSION

FRIDAY MORNING, DECEMBER 3RD, AT 9:30 A. M.

THE POLICE AS A FACTOR IN MUNICIPAL GOVERNMENT

Organization and Policy of Municipal Police—Mr. J. J. O'Connor, Chief of Police, St. Paul

Is there a Sound Basis for Police Discretion in the Enforcement of Law?—Judge E. F. Waite, Municipal Court, Minneapolis

The State Police—Dr. F. C. Miller, Central High School, St. Paul

Discussion:

Mr. Frank T. Corrison, Chief of Police, Minneapolis

Judge John W. Finehout, Municipal Court, St. Paul

Luncheon was served at 12:30 for members of the Academy and guests at the home of Mr. William A. Schaper, 625 Fulton St. S. E.

THIRD SESSION

FRIDAY AFTERNOON, DECEMBER 3RD, AT 2:30 P. M.

MUNICIPAL ACCOUNTING

The Making of the City Budget—Mr. Louis Betz, Comptroller, St. Paul

State Supervision of Public Accounting in Minnesota—Hon. F. N. Stacy, Deputy Public Examiner, St. Paul

Discussion:

Hon. J. C. Haynes, Mayor of Minneapolis

Dr. Thomas W. Mitchell, Assistant Professor of Economics, University

Mr. Dan C. Brown, Comptroller, Minneapolis

FOURTH SESSION

FRIDAY EVENING, DECEMBER 3RD, AT 8:15 P. M.

**Commission Plan of Government—Prof. Benjamin F.
Shambaugh, University of Iowa**

Discussion:

Mr. J. W. Bennett, Editor, St. Paul Dispatch

**Judge David F. Simpson, District Court, Minne-
apolis**

REPORT OF SECRETARY-TREASURER

The election of the former secretary to the presidency of the University of North Dakota and his consequent removal from the state on July 1st, 1909, necessitated the selection of a successor. The executive committee appointed Dr. William A. Schaper for the unexpired term.

The paid up membership of the Academy has increased from 105 in 1908 to 141 in 1909. Fourteen memberships remain unpaid, making a total of 155 names on our mailing list. About 300 circular letters were sent out during the year to persons in this state who might be interested in the work of the Academy. This advertising has brought good results and is still adding to the list of members. Sixteen new names have been added since the close of the year, making 171 when this copy went to press.

To be entirely self-sustaining the Academy needs a paying membership of 200, and this number is now in sight. In the past the income has been anticipated, the expenses of two meetings having been paid out of the dues for three years. The past year was on that account the critical one in the growth of this association. To meet the most necessary expenses, all unessential items had to be eliminated. The discontinuance of the annual dinner and other entertainment at the expense of the treasury resulted in a saving of about \$42 over the previous year.

By exercising the most rigid economy it has been possible to pay up all outstanding bills and to close the year without a deficit. The income for 1910, how-

ever, had to be drawn upon slightly, owing to the fact that the dues for 1909 were not all paid up.

There are on hand the following publications:

Volume I—

Cloth bound	30
Paper covered	228
Total	258

Volume II—

Cloth bound	107
Paper covered	252
Total	359

TREASURER'S REPORT

Balance from 1908	\$79.70
W. L. Harris	20.00
Sales	39.00
Membership	319.10
Total receipts	\$457.80

DISBURSEMENTS

Publishing Proceedings of 1908	\$319.95
Unpaid Expenses of 1908 Meeting—	
Supper	18.00
Luncheon	19.10
Cigars	3.75
Delicatessen	3.25
Expenses of 1909 Meeting—	
Traveling expenses of Dr. Shambaugh.....	23.00
Programs and posters	7.60
Sending proceedings	24.23
Postage	27.36
Stationery and supplies	7.35
Total disbursements	\$453.59
Balance on hand	4.21
Total	457.80

The new members have been encouraged to buy the back numbers, and many have done so. The publications of the Academy are becoming known and before long a full set will be at a premium.

Respectfully submitted,

WILLIAM A. SCHAPER,
Secretary-Treasurer.

MEMBERS AND SUBSCRIBERS

- ALLIN, PROF. C. D., University of Minnesota, Minneapolis, Minn.
ALEXANDER, W. A., Supt., Grand Meadow, Minn.
ANDERSON, PROF. FRANK M., University of Minnesota, Minneapolis, Minn.
ANDRIST, PROF. CHAS. M., University of Minnesota, Minneapolis, Minn.
ARMSON, J. G., Tax Commissioner, State Capitol, St. Paul, Minn.
BAXTER, JOHN T., 1105 Nicollet Ave., Minneapolis, Minn.
BENNETT, J. W., 1739 Marshall Ave., St. Paul, Minn.
BETHKE, WILLIAM, University of Minnesota, Minneapolis, Minn.
BETZ, LOUIS, City Hall, St. Paul, Minn.
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DALEY, A. J., Luverne, Minn.
DAVIS, PROF. WILLIAM S., 1005 University Ave., S. E., Minneapolis, Minn.
DEAN, W. B., 353 Summit Ave., St. Paul, Minn.
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- FARLEY, J. K., Kaloa Kanai, Territory of Hawaii.
FISH, DANIEL, New York Life Bldg., Minneapolis, Minn.
FISHER, GEO. A., 221 First St. N., Minneapolis, Minn.
FLETCHER, PROF. H. J., University of Minnesota, Minneapolis, Minn.
FOOTE, ALLEN R., National Tax Association, Columbus, Ohio.
GARDNER, PROF. HENRY B., Brown University, Providence, R. I.
GRAY, PROF. J. H., University of Minnesota, Minneapolis, Minn.
GUTRIDGE, A. W., Sec. Associated Charities, St. Paul, Minn.
HANGGI, JOHN A., 225 Sherburne Ave., St. Paul, Minn.
HARRIS, W. L., The New England, Minneapolis, Minn.
HAWLEY, N. F., 115 S. 4th St., Minneapolis, Minn.
HAYNES, HON. J. C., Mayor, City Hall, Minneapolis, Minn.
HEALY, FRANK, City Attorney, City Hall, Minneapolis, Minn.
HESS, PROF. R. H., 500 Essex St., Minneapolis, Minn.
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LELAND STANFORD JR. UNIVERSITY, Stanford, California.
LORD, SAMUEL, Tax Commissioner, State Capitol, St. Paul, Minn.
LURTON, FREEMAN E., Supt., Anoka, Minn.
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OLSON, M. N., 3052 10th Ave. S., Minneapolis, Minn.
PERIGORD, REV. PAUL, St. Paul Seminary, St. Paul, Minn.
PHELAN, PROF. R. V., University of Minnesota, Minneapolis, Minn.
POLLEYS, THOS. A., Omaha Railway Office, St. Paul, Minn.
POPE, REV. E. R., 701 Lumber Exch. Bldg., Minneapolis, Minn.
RAKOWSKY, C. L., City Assessor, Duluth, Minn.
RANKIN, PROF. A. W., University of Minnesota, Minneapolis, Minn.
REEP, PROF. SAMUEL N., University of Minnesota, Minneapolis,
Minn.
RISING, F. A., Winona, Minn.
ROBERTS, W. P., Metropolitan Life Bldg., Minneapolis, Minn.
ROBINSON, PROF. E. V., University of Minnesota, Minneapolis,
Minn.
ROBINSON, S. A., Omaha Railway Office, St. Paul, Minn.
ROGERS, DR. A. C., Faribault, Minn.
ROSS, G. W. C., 1st National Bank Bldg., Duluth, Minn.
RUGGLES, PROF. CLYDE O., Winona, Minn.
RYAN, REV. JOHN A., St. Paul Seminary, St. Paul, Minn.
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SALTER, C. I., Prin., Minnesota Lake, Minn.
SCHAPER, PROF. WM. A., University of Minnesota, Minneapolis,
Minn.
SELVIG, C. G., Supt., Glencoe, Minn.
SHEPPARD, BYRON L., University of Minnesota, Minneapolis, Minn.
SIMPSON, JUDGE DAVID F., Court House, Minneapolis, Minn.
SMITH, E. E., 813 New York Life Bldg., Minneapolis, Minn.
STACY, F. N., Deputy Public Examiner, State Capitol, St. Paul, Minn.
STANLEY, CHAS. P., Supt., Olivia, Minn.
STARRETT, E. B., 818 7th St. S. E., Minneapolis, Minn.
STEPHENS, A. C., Crookston, Minn.
STOMBERG, PROF. A. A., University of Minnesota, Minneapolis, Minn.
STONE, ROYAL A., 339 Endicott Bldg., St. Paul, Minn.

- SWIFT, LEE, Supt., Tracy, Minn.
SULLIVAN, SENATOR GEO. E., Stillwater, Minn.
TAYLOR, DR. H. H., 75 Lowry Arcade, St. Paul, Minn.
TAYLOR, JUDGE M. D., St. Cloud, Minn.
TEISBERG, THOMAS, Prin., Ashby, Minn.
THORSON, N. A., Supt., Crookston, Minn.
TIGHE, SENATOR AMBROSE, Nat. Ger. Am. Bank Bldg., St. Paul, Minn.
TYRON, CHAS. J., 504 Oneida Bldg., Minneapolis, Minn.
UPHAM, WARREN, Sec. Minn. Historical Society, St. Paul, Minn.
VANDYKE, J. A., Supt., Coleraine, Minn.
VAN TUYL, C. W., Minn. Loan and Trust Bldg., Minneapolis, Minn.
VIRTUE, PROF. GEO. O., University of Nebraska, Lincoln, Neb.
WAITE, JUDGE E. F., Municipal Court, Minneapolis, Minn.
WEBBER, C. C., Deere & Webber Company, Minneapolis, Minn.
WEST, PROF. WILLIS M., University of Minnesota, Minneapolis, Minn.
WHITE, PROF. A. B., University of Minnesota, Minneapolis, Minn.
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WILLSON, CHAS. C., Rochester, Minn.
WILSON, JUDGE FRANK T., Stillwater, Minn.
WINONA NORMAL SCHOOL, Winona, Minn.
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WRIGHT, CHAS. R., Fergus Falls, Minn.
WRIGHT, JUDGE B. F., Park Rapids, Minn.
YARDLEY, W. H., Pioneer Press Bldg., St. Paul, Minn.
YOUNG, PROF. J. S., 1205 7th St., S. E., Minneapolis, Minn.
YOUNG, JAS. W., Walker, Minn.
YOUNGQUIST, C., Supt., Mabel, Minn.

GENERAL SUBJECT

Some Problems

IN

Municipal Government

.

First Session

**ANNUAL ADDRESS OF THE PRESIDENT
AND
THE CITY CHARTER PROBLEM**

THE CITIZEN AS A MEMBER OF THE MUNICIPALITY

By THOMAS A. POLLEYS

We citizens are prone to fill the air with bitter complaints concerning our city governments. But, as is usually the case with constant complainers, the real seat of trouble is inside, not outside, ourselves. Say what we may to the contrary, our city governments are fairly representative of the average conscience of the community. Wherever city government is corrupt or inefficient it is because the average citizen has supinely permitted it to become so. The average common councilman is just as honest as the average citizen who elects him. When the conscience of the average citizen shall rise to a higher plane, then, as an inevitable consequence, municipal government will do likewise. When the time comes that the great body of plain citizens really want and purpose to have honest and efficient municipal government, they will have it; until that time, they will not have it.

The greatest of all our municipal problems is this problem of the average citizen. What are his shortcomings? How can they be remedied?

The average citizen is woefully ignorant concerning his city. I refer not so much to the ignorance of illiteracy as to that denser ignorance resulting from misinformation and misunderstanding concerning men and measures. The average citizen, whether he be educated or uneducated, possesses surprisingly little

definite knowledge concerning his city and its government. Handicapped by this ignorance, he will seek in vain to break the power of the political boss. Improvement of municipal conditions must be preceded by specific knowledge of those conditions and their causes. Mere discontent and fault-finding, based on nothing more tangible than common gossip and unconfirmed surmise, are utterly futile.

Not only are we average citizens ignorant, but we are also indifferent, concerning municipal problems and their solution. We indeed protest with loud voice that we are filled with righteous wrath by the corrupt conditions which confront us, but we confess by our acts and by our failure to act that, in reality, our souls are quite untroubled. The average citizen is not a cheat or a thief, but he observes with equanimity the accomplishment of underhanded schemes by which the city is fleeced and robbed. He is not himself a law-breaker, but persistent and impudent violations of wise laws well calculated to promote public peace, safety, decency, prosperity and happiness, cause him no uneasiness whatever, so long as there is no interference with himself and the immediate circle of his friends. That the common good of all is the individual good of each is an abstract proposition thus far but dimly apprehended by the average citizen.

Besides being ignorant and indifferent concerning civic affairs and conditions, the average citizen is usually dominated by partisan prejudice. The boss and the gang rule our cities chiefly because of their ability to create, stimulate and manipulate this unreasoning and unreasonable feeling of partisan prejudice. When once we shall have ceased to be slaves to this prejudice, the boss will no longer be enthroned in our midst.

The indictment against the average citizen stands, then, as follows:—He is ignorant, though educated; he is indifferent; he is bound by the fetters of partisan prejudice. How are these great defects to be overcome? By the acquisition and dissemination of real knowledge concerning municipal affairs and by straightforward, courageous action based on such knowledge.

First of all, the necessary knowledge must be acquired. This work the average citizen is neither disposed nor equipped to do for himself. If done at all, it must be done by others for him. Any method of investigation that adds to the common stock of useful knowledge concerning the city and its affairs is entitled to our thanks. Grand juries have at times been known to conduct a real investigation resulting in the discovery of real facts. Magazine and newspaper writers from time to time offend our sensibilities by dragging malodorous facts from the obscurity of the muck-heap into the light of day. Occasionally specially appointed committees of citizens have investigated municipal conditions with thoroughness and success. But all these methods of municipal research are mere makeshifts, intermittent in their operation and short-lived in their results. When one of these occasional investigations has culminated in a final report, the grateful community heaves a deep sigh of relief, files and forgets the report and forthwith proceeds to add still others unto the long catalogue of offences of which it has just been found guilty.

What we need is a simple but effective organization which shall be steadily at work, all the year round and year after year, gathering, summarizing and popularizing information of all kinds bearing on the honesty and efficiency of every department of the

city government. This plan is already being acted upon with great success in various cities. It is more effective no doubt when funds are available for the employment of well-qualified experts to assist in the conduct of the investigations. But, even in cities where no money is available for the employment of such experts, it ought to be perfectly feasible for municipal research to be carried on, effectively and continuously, by the voluntary and uncompensated efforts of a small body of public-spirited citizens. A single score of real investigators will be sufficient. This body of investigators should not await appointment by the mayor, or the commercial club, or the chamber of commerce, or by any other organization. Each investigator should nominate and appoint himself, being the final judge of his own qualifications. Each should be or should strive to become a specialist and the more specialties represented the better. Ultimately this self-appointed and self-perpetuating body of municipal investigators should be engaged in a continuous scrutiny of all the various departments of the city government. Each investigator will confine his attention mainly to his own chosen line of investigation, but not exclusively. Such investigators will necessarily be men of hobbies. Thanks be for the man with a hobby. Without him civilization would stand still. We all know, however, that when such a man is not actually riding his hobby he is usually engaged in currying it off and has little time and less inclination to spend in looking over his neighbors' hobbies. This defect of character must be overcome. To this end our body of investigators should take careful cognizance of one another's research work and should get together occasionally for an interchange of ideas and a comparison of methods and results. In this way each investigator will gradually acquire a great fund

of effective knowledge concerning municipal conditions.

But the acquisition and compilation of knowledge by specialist investigators is a mere preliminary step. This knowledge must be put into form that will appeal readily and strongly to the intelligence and conscience of the average citizen and then it must be disseminated. This portion of the work must be done without bias or favoritism. The word of commendation for faithful service must be as promptly forthcoming as the word of reproach for corruption or inefficiency. The purpose of municipal research should be to aid and inspire the able and honest officer in his work, quite as much as to detect the dishonest and inefficient one. Real information as to actual municipal conditions has a high value as news and in most cities there will be little difficulty in getting before the public through the newspapers a full presentation and discussion of the facts discovered by the investigators in their research. Instructive details which do not appeal to the ordinary newspaper reader should be thrown into the form of occasional bulletins or leaflets and placed in the hands of that portion of the public particularly interested therein. From time to time interesting public meetings can be held at which the results of research as to particular civic conditions can be presented, illustrated and discussed. The most effective of all means of spreading knowledge as to true municipal conditions, however, will always be the face to face talk of friend with friend.

But the ordinary man is so constituted that he finds it difficult to take an active interest in things political except at election time. The forces which make for evil in our city politics well understand this characteristic of the average citizen and, with the wisdom of the serpent, adapt their plans to it. Just

before election time work on the streets is plenty, cigars and beer are free, brass horns are blaring, bass drums are booming, and fervid oratory is burning the very oxygen from the circumambient air. And all to what end? To the very manifest and very necessary end that the back-slidden partisan may be revived anew and again convinced that he only who votes the straight ticket treads the simon-pure pathway to political salvation.

The forces that make for good city government should profit by the example. Municipal research and the dissemination of the results of such research should go on steadily the year round. But the work of gaining votes for good government can be most effectively and economically prosecuted during the few weeks next preceding the city election. Little aid need be expected from the newspapers at this stage of the game for, with few exceptions, they are still dominated by partisan considerations even in mere municipal elections. But much may be accomplished without their support.

As election time approaches the friends of better city government should aid in every proper way in the selection by each political party of candidates of as high a moral standard as possible. This means participation in the primary election. Then, on election day, the true friends of better civic conditions, will cast their votes and the entire weight of their influence in favor of the candidate best fitted for the duties of each office, entirely unmindful of the question of party success or defeat. The small central body of municipal investigators, acting first directly upon that considerably larger body of citizens who have an active interest in the results of municipal research, and then acting through the co-operation of this larger body upon the great mass of average citizens, ought

at any election to exercise a direct and positive influence upon a sufficiently large portion of the voting public to hold the balance of power or, at least, to make the outcome of the election a matter of uncertainty. When this situation arises, we shall find the several political parties vying with one another in the presentation of more and more desirable candidates for municipal offices. The concrete method by which the forces for better government shall bring their influence to bear upon the individual voter is by private conversation and personal correspondence. At election time, leave the public meetings to the political parties. The personal solicitations of a compact but determined body of thoroughly informed and public-spirited citizens, privately addressed by the spoken and the written word, to friends and acquaintances among the municipal voters cannot fail to exercise an immense influence over the outcome of our elections.

It will no doubt be objected to the above program, imperfectly outlined for the gradual betterment of the average citizen, that it presupposes a degree of self-sacrifice and public spirit on the part of the self-appointed investigators of municipal affairs quite impossible of practical realization. I think the objection not well taken. It is quite true that very, very few citizens are capable of the degree of self-sacrifice presupposed. But those few are a host. It has been well and truly said that, "Whenever anything extraordinary is done in American municipal politics, whether for good or for evil, you can trace it almost invariably to one man." In every city there are doubtless to-day a considerable number of citizens each of whom is particularly interested in, if indeed he is not already investigating, some one or more of the various problems of municipal government. These men are ready and willing to devote a portion of their talent, their leisure,

and their means to the betterment of civic conditions. What is needed is that they get into close touch with one another and that each take up and keep up the particular line of municipal investigation which most strongly appeals to him, from time to time laying the results of his research before his co-investigators along other lines, for their counsel, and for their instruction and guidance as citizens. In the first instance it is only necessary that two such investigators get together. If they are the right sort they then can reach out for still other associates to aid in covering more and more perfectly the ground that should be covered by a permanent and efficient Citizens' Bureau of Municipal Research.

Sacrifice? Undoubtedly it means sacrifice—sacrifice of time, sacrifice of pleasure, sacrifice of money, sacrifice of political preferment. But where was there ever anything really worth while in this wicked old world of ours that meant anything but sacrifice?

THE CITY CHARTER PROBLEM

WITH SPECIAL REFERENCE TO MINNESOTA

By WILLIAM A. SCHAPER

To establish an efficient and adequate system of government for cities in this or any other state, three essential factors must be considered: first, the proper relation of the city to the state, that is, the degree of control which the central government shall maintain over its cities and the manner in which that control shall be exercised; second, the proper form of organization of the city for its own government; third, measures for securing the efficient, just, and economical operation of such a government, after it has been introduced.

These three factors are here given in their logical order, which is not necessarily the order of their importance. In this country, there has been very little thought given to determining the extent to which a city's affairs should be under state control; very much more attention has been given to devising and remodeling city charters, while only a beginning has been made in directly combating conditions which tend to pervert or to undermine and destroy any system of city government that may be devised. While there has been some legislative experimentation, and while there is now an accumulated experience of at least a century to draw upon, there is still no great permanent American Municipal Statute which establishes, once for all, the relation between the cities of one of our commonwealths and the state

government. There is as yet no settled form of city charter, and no great body of corrective and ameliorative legislation to provide a trained efficient public service and to ensure wholesome living conditions in the cities. The basic principles are becoming clearer with each new experiment in legislation and in charter making, so that we may expect before long to see some of these things definitely settled.

Our particular municipal problem in Minnesota is but a local variation of the general one, and cannot be well presented without at least sketching the main landmarks in the development of municipal government in other states. A study of this municipal legislation and experience must convince any one that the root of the whole difficulty has been the attitude of the state government toward its cities; in other words, the meddlesome, and even pernicious, interference of the state legislature in strictly municipal affairs. It is a striking fact that the states have exercised their control over cities through legislative process, directly, and almost solely in that manner. Let us see how this practice and this power of the state legislatures in municipal affairs developed.

CHARTERS GRANTED BY THE COLONIAL GOVERNORS

In colonial times, all city charters were granted by the royal governors, as executive acts. This was in accordance with ancient English law and practice. It dates back to the Norman kings in the eleventh century, when the first urban communities received a government distinct from the local rural system. These grants consisted of three important royal concessions; the *firma burghi*, a fixed borough tax paid

into the royal coffers at stated times, in lieu of all feudal exactions, the right to elect their own revenue officers and the right to have borough justices. These concessions were either wrung from the king (occasionally from powerful neighboring feudal lords) by the burghers, through strife and bargaining, or they were freely offered to them when the royal coffers needed to be hastily replenished.

The document stating the grant was called a "char-ta," later charter, from the Latin "carta" a "card," or a "paper," so that the charter came to mean the written document in which the grant of privileges to the city was expressed, and later the form of organization and corporate powers conferred. Thus the early English city charters were acts of the executive and partook of the nature of permanent grants, at least they were pledges of the king to the burghers. In like manner, the early American city charters were granted by the royal governors, representing the crown in the colonies. According to the records, there were 20 such charters granted; but only 15 of the towns receiving them became permanent cities. Of these permanent chartered towns, New York is the oldest; its first charter bearing date of 1686. Albany was granted a charter the same year, Philadelphia in 1691, and the last granted under colonial government was to Trenton, New Jersey, in 1746.

It is rather significant that no city charters were granted by the colonial governors, or were, in all probability, applied for, after the first signs of resistance to British authority appeared in the colonies. Baltimore, experiencing a need for a separate municipal organization in this period, preferred to entrust her affairs to a "Board of Town Commissioners," seven men, appointed by the Colonial Assembly of Maryland, for life in 1754. Charleston, and all other

urban, as well as rural communities in South Carolina, except 24 coast parishes were governed, not by a single commission, but by several separate commissions, all appointed in the first instance by the colonial legislature. No charters were granted, however, by the legislature in any of the colonies until after the Revolution.

SO-CALLED LOCAL SELF-GOVERNMENT

The popular opposition to the colonial governors, and, no doubt, the traditional distrust in the Anglo-Saxon of the executive and executive power, or action, led the people of the thirteen original states, in drafting their first constitutions, to split up and hedge about the authority of the executive, and to entrust the legislature with the greatest possible measure of power. Thus it happens that to this day the executive power is not vested in its entirety in the governors of the several states. Along side of the governor are many elected and appointed state officials and boards who exercise important executive functions; but who are not subject to the governor's direction, nor responsible to him. Furthermore, the central authorities have little power of direction or supervision over local county, city, or town executive and administrative organs. The executive organization of our states, to put it in another way, is decentralized.

On the other hand, the legislative power was at the beginning, and continues today, highly centralized. In the absence of express constitutional restrictions, the local governments, city, county, and town, are creatures of the state legislature, which can only exercise such powers as are definitely granted to them, and which the legislature can regulate; yes, make and unmake at will. Our state laws are thus centrally made and locally applied by locally elected officers, to

a very marked degree. Accordingly, it has been a common boast that ours is a government of laws and not a government by men.

This system is popularly known as local self-government, and was as characteristic of English local government at one time, as it is characteristic of our local government today. By slow and painful steps, beginning with the acts on sanitation in 1834 and culminating in the establishment of the Local Government Board in 1871, England has introduced an effective central administrative supervision over all local authorities, both rural and urban. Our efforts in that direction have so far failed, except, possibly, in school administration.

It is very instructive to survey the acts of the State legislatures to see how they have used their extensive power, particularly the power to incorporate and regulate cities and villages, and control their affairs.

CHARTER MAKING BY THE STATE LEGISLATURES

The first American city to receive a charter from a State legislature was Charleston, South Carolina, in 1783. The number of new charters issued before 1820 was not large.

The legislatures, in forming the first city charters, granted a very limited range of powers, and these powers were enumerated. The city did not receive a general grant of power to manage all purely municipal affairs, as is the practice in continental Europe. The power to tax was limited to a special levy for a particular purpose. The courts construed these grants strictly and even narrowly. This policy compelled the cities to appear constantly before the legislatures asking for additional taxes, a change of organization, extension of their bounds, and, in short, leave to man-

age their local concerns. Each charter was passed as a special act and all subsequent grants were passed as special acts amending, extending, or consolidating the previous acts. This method of dealing with cities did not work a great hardship so long as the cities were few in number and relatively small.

Meanwhile, the form of the city charter underwent essential changes. In colonial times, the mayor was annually appointed by the governor of the province, with four exceptions.* In Elizabeth, New Jersey, the Council elected the mayor from among the existing aldermen; and in the three close-corporation cities of Philadelphia, Annapolis and Norfolk the corporation had this power, as was the custom in England where this type of organization was then so common. In no city was the mayor elected.

The Council consisted of the mayor, recorder, aldermen and councilmen, and exercised most of the functions. In ten of the cities, the recorder, aldermen and councilmen were elected for one year; in Elizabeth for three years; in Trenton for life. In the three close-corporation cities, the aldermen and councilmen were elected for life, the aldermen by the entire council, which was the corporation, and the councilmen by the mayor, recorder and aldermen. In no city did manhood suffrage exist. The right to vote was based on some form of property qualification everywhere.

The functions of these colonial cities did not cover a wide range, but within this field their powers sufficed. Their judicial functions were of relatively greater importance than at present. The mayor, recorder and aldermen, acting independently, had the powers of the justice of the peace; while, together, they sat as a local court of record, and in some in-

*Fairlie, *Municipal Administration*, Chapter V.

stances they were members of the county courts. In legislative matters their powers were limited to passing police ordinances not repugnant to the laws of England nor of the province. In administration they were restricted to those functions that were purely urban and local and not provided for by the county, town or other state-wide local authorities.

The early charters granted by the state legislatures followed this plan very closely, except, of course, that all close-corporations were discontinued, and all city councils made locally elective; but the mayor continued to be appointed by the governor or by the council. The only important innovation was the introduction of the bicameral system and the veto power of the mayor in a few cities, in imitation of the national constitution: for example Philadelphia 1796 and Baltimore in 1797. After 1825, manhood suffrage was very generally introduced and the mayor was elected by popular vote, but his importance in city government increased very slowly.

Modern city conditions and the problems of municipal administration, which they occasion, did not appear until about 1850. The percentage of urban population, starting with 3.4 in 1790, had very gradually risen to 4.9 in the first three decades; in the next three it jumped to 12.5. The number of cities of over 8,000 had increased from six in 1790 to thirteen in 1820, but leaped to 85 in 1850. New York, the leading city, had reached the half-million mark and Philadelphia had attained 400,000*.

Along with this increase in the number and size of cities, came also a rapid extension of municipal functions. The first modern disciplined and uniformed police department was introduced in New York in 1845. Then came also the paid fire brigade, extensive

*Census 1900, Population, Vol. I, P. I., Ch. LXXXIII.

water works, sewer systems, public schools, parks, street improvements, and the poor department.

The demand upon the legislatures for increased powers, changes of organization, extensions of all sorts, became incessant. The volume of special legislation to meet this and other demands became too large for careful deliberation or scrutiny. The chance for jobbing and log rolling on a large scale, with great sums at stake, had come. The changes in the form of the city charter from that time to this have been radical and quite erratic. The City Council, on the whole, has declined in influence and power. Some of its former functions, and many of the new ones, were entrusted to boards, independent of each other, now elected and now appointed by municipal, or even by state authority, or they were turned over to the mayor. Many more offices were made elective and really answerable to no one except to the political party or boss. The city government tended constantly to disintegrate, and to be discredited. Cities experimented with the council type of organization with one chamber, or with two chambers; with the mayor type; the multiple board plan, or even with the single commission plan, and all types have been adopted and abandoned in turn; but the spoils system remains.

The State legislature has also lost much of its former prestige. Its power has been curtailed. The constitutions have become longer and more detailed in their restrictive clauses, and amendments more frequent. In fact, legislation, by the route of the constitutional convention and the process of amendment, has become common; and continues to encroach on the province of the legislature.¹ The history of the constitutional provisions concerning special legislation is, in part, the history of the struggle for home rule in American cities.

¹Dealey, *General Tendencies in State Constitutions*, Am. Pol. Sci. Rev. Feb., 1907.

CONSTITUTIONAL RESTRICTION AGAINST SPECIAL LEGISLATION

This struggle really dates from about 1850. The first constitutional provision regarding special legislation appeared in the constitution of North Carolina in 1835. It prohibited the granting of divorce or alimony, change of name, or the restoration of a convict to citizenship by special act, and required 30 days notice before special acts on any other subject could be passed. The New Jersey constitution of 1844 contained the first elaborate restrictions against special legislation, and contains the germ of many of the later provisions on the subject.¹ There are three separate clauses. The first provides that, "No private, special or local bill shall be passed; unless public notice of the intention to apply therefor and of the general object thereof, shall have been previously given;" and directs the legislature to prescribe at the next session the time and mode of giving such notice and the manner in which the evidence of such notice shall be preserved. The following clause strictly enjoins the legislature from legalizing any lotteries or gambling, race-track or otherwise, either by special or general act. The last and most detailed clause provides that the legislature shall pass no private, local, or special laws on ten enumerated subjects. The five enumerations which concerned the cities most directly were these:

"Vacating any road, town plot, street, alley, or public grounds."

"Regulating the internal affairs of towns and counties; appointing local officers or commissions to regulate municipal affairs."

¹Art. IV, Sec. 7, cl. 9-11.

"Granting to any corporation, association, or individual, any exclusive privilege, immunity, or franchise whatever."

"Granting to any corporation, association, or individual the right to lay down railroad tracks."

"Providing for the management and support of free public schools."

The remaining five enumerations concern: laying out roads, changing fees of officers during their term, changing the law of descent, the drawing of juries, and change of venue. Following these enumerations, is this general statement:

"The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature."

The first sentence might be construed to apply to the granting of city charters, but it was not specific and was doubtless meant to refer to the granting of charters to private corporations only.

These limitations on special legislation of New Jersey, in 1844, were original and full of suggestions for the later constitution makers in other states. The general plan of arranging the clauses and the language itself were very widely copied. Ohio was the first to fall into line with her constitution of 1851,¹ but the New Jersey constitution was not drawn upon as much as it was later in other states. The Ohio constitution made a distinct advance by including the follow-

¹Art. XIII.

ing section: "The General Assembly shall provide for the organization of cities, incorporated villages, by general laws; and restrict their powers of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

The Indiana constitution of the same year marks no advance except that the limitation is extended to more subjects.¹ The Iowa constitution of 1857 contained the new rule that, in the cases enumerated and in all other cases where a general law can be made to apply, all laws shall be general and of uniform operation throughout the State.² All the previous constitutions had failed to define a special law. The Iowa rule was at least a hint that it was an Act which was not uniform in its operation throughout a state.

The Pennsylvania constitution of 1873 is explicit, and drastic.³ It contained 27 enumerations and additional general clauses. A careful examination shows that it was drafted with a view of preventing evasion, a lesson doubtless obtained from the experience of other states. Not only are all special acts prohibited relating to 27 enumerated subjects, but no special law can be indirectly enacted by the partial repeal of a general law. Public notice is required before a special bill can be introduced, and the nature of that notice is fixed in the constitution and not left to the legislature, as in New Jersey. The right to repeal a special law is expressly granted.

There was serious provocation for these limitations upon the Pennsylvania legislature. Among other things, an act had been passed in 1875, creating a public building commission with authority to con-

¹Art. 4, Sec. 22.

²Art. 3, Sec. 30.

³Art. 3, Sec. 7-8.

struct the municipal buildings of Philadelphia, and to compel the City Council to raise the money therefor. Acting under the law, the commission made a request for \$1,500,000, the amount required to cover one year's operations. The city claimed that, under the law, the commission could not incur obligations beyond the amount set aside for public buildings by the City Council. The Supreme Court of Pennsylvania, in 1876, declared that the act was valid and the city council was bound to furnish the commission with the funds needed.¹ The Court referred to abuses that had grown up under that law and to the general denunciation of it, but declared that the legislature or a constitutional convention was the proper authority to grant the relief sought. The State legislature, acting through a commission, thus compelled the city to put up public buildings, which it did not desire, at a cost to its taxpayers of many millions of dollars.

The Missouri constitution of 1875 broke new ground, and marks practically the close of this development.²

Special legislation is prohibited on 31 enumerated subjects. Then follows this new clause: "In all other cases, when a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on the subject."

In place of trusting to the judgment of the legislature, the people tried to get the courts to decide as to all cases not covered by express prohibitions. But experience soon showed that, even the positive prohibitions could be easily circumvented. So far, not a

¹Perkins vs. Slack, 85 Pa. State Reps. 270.

²Art. IV, Sec. 53.

single constitution had given a definition of special legislation. The legislatures, with the sanction of the courts, made classifications of cities, and so gave all acts a general form but often a very special application. The Ohio legislature devised a most ingenious system of classes, so minute that any city in the state could be singled out for special treatment without violating the constitution. Finally, in 1902, the practice had gone to such absurd lengths that the Supreme Court declared all such acts invalid and a special session of the legislature had to be called to enact a new municipal code. Experience shows conclusively that so long as the states deal with their cities through legislative process, it is useless to deny the legislature the power to grant relief in individual cases. The very cities who clamor loudest for constitutional restrictions might find themselves compelled to beg the legislature to pass a much needed law for their benefit, after the power to do so had been denied.

The New York Constitution of 1894 seems to recognize this difficulty.¹ It defines, for the first time, a special act to be one that applies to a single city or to less than all the cities of one class. For this purpose the cities are grouped into three classes. In the first, come all cities over 250,000; in the second, are those over 50,000 and under 250,000; and in the third are included all other cities. Special bills can be passed but such bills, after passing both houses, must be sent to the city or cities concerned for their consideration. If approved by the mayor in a city of the first class, or by the mayor and council in other cities, within fifteen days, the bill becomes a law upon the signature of the governor. If not approved the bill so labelled must be repassed by both houses and

¹Art. 12.

is then subject to the governor's action. Such a provision is intended to prevent abuses through forced publicity. If the citizens are very alert, the plan may be effective. The Michigan constitution of 1908¹ leaves it to the courts to define a special act, but provides that all such acts, in order to be binding, must be referred to the people of the place affected for ratification. The Michigan legislature of the previous year had passed 414 special acts. The constitutional convention in its address to the people indicated that it looked for a sweeping reform, on account of the introduction of the referendum, in all special legislation.

The constitution of Mississippi, in 1890,² and of Virginia, in 1902,³ provided for a joint committee of the House and Senate, to which all special bills must be referred for action.

While this campaign against special legislation was on all over the country, a new plan to secure relief from legislative interference in city affairs was inserted in the Constitution of Missouri in 1875.⁴ This is popularly known as the "home rule" plan. St. Louis then had a joint city and county government which was very complex and unworkable. The delegation from the city induced the constitutional convention to adopt a provision permitting cities over 100,000 in population to elect a charter commission to frame and amend their own charters, subject to ratification by the people. Such charters must not, of course, conflict with the constitution and laws of the State. A charter was at once framed and adopted which separated city and county government, and which is still in force.

¹Art. V, Sec. 30.

²Art. IV.

³Art. IV, Sec. 51.

⁴Art. 9, Sec. 16.

The City of San Francisco also had a joint county and city government at that time.¹ The governing body was a Board of Twelve Supervisors and a Mayor, acting as a commission. They ran things in a tyrannical manner, which finally resulted in action. When the delegates to the constitutional convention of 1878 were to be elected, a non-partisan mass-meeting was called to insure a delegation pledged to secure self government for San Francisco. This citizens' movement obtained the adoption of the St. Louis plan. The opposition in the constitutional convention took the ground that such a plan would place San Francisco in the same relation to the State Government that California bore to the Federal Government. The scheme was branded a "rank secession." A facetious resolution was offered in the convention, proposing to accord to any city organized under the article all the privileges and consideration accorded to the most favored nations, and to provide the State with a duly accredited minister in such city.² This opposition was shown to be specious, but, to insure its adoption, the measure was amended requiring cities to submit their charters to the legislature for approval or rejection without the power to change. Thus the plan became a part of the constitution of California in 1879. At first it was limited to cities of over 50,000, by subsequent amendments it has been made to apply to all cities of over 3,500.

The plan appeared in the constitution of Washington in 1889, Minnesota in 1896, Colorado in 1902, Oregon in 1906, Oklahoma in 1907, and Michigan in 1908.

The Oregon and Michigan provisions do not specify the mode of procedure by which cities may frame or amend their charters. All details are to be supplied by future legislative acts.

¹California Constitutional Convention, 1878-79, Vol. 2, p. 1060.

²California Constitutional Convention, 1879, Vol. 2. p. 1064.

CHARTER LEGISLATION IN MINNESOTA.

The legislation of Minnesota has contributed no new principle in the solution of the charter problem, unless the primary election law of 1899 can be so considered. By that act, the nomination of candidates for public office was made, practically a function of the government, rather than a private matter to be attended to by a political party. The Act of 1899 was the first compulsory direct nomination law adopted, and was a step in advance. Beyond that there has been no constructive legislation bearing on municipal problems, contributed by this State.

The present constitution was adopted in 1857. It contained two provisions against special legislation; one prevented the granting of a divorce by special act, and the other the formation of corporations, except for municipal purposes.¹ There was thus an indirect sanction of special legislation for cities. The usual limitations on special legislation were secured by the amendment of 1881.² This contained two sections, the first prohibited special legislation on 11 enumerated subjects. The 9th item reads: "For incorporating any town or village." The second section established the rule that all laws shall be uniform in their operation throughout the State. This amendment put a stop to the incorporation of villages by special act. The legislature passed a general Act in 1883, empowering the judges of the district court to incorporate villages.³ This act was declared to be unconstitutional because to grant articles of incorporation requires a legislative power which cannot be delegated to the courts.⁴ The Act of 1885 validated the charters that

¹Art. IV, Sec. 31.

²Gen. Laws of Minn., 1880, Chap. 3, p. 21.

³Laws of 1883, c. 73.

⁴State vs. Simons, 32 Minn. 540.

had been obtained from the courts under the former Act and provided a new mode of procedure.

The granting of city charters by special Act went merrily on at every session. The special laws for 1891 contain 507 separate Acts and cover 1104 pages. Many of these acts are entire city charters, like the one for Mankato, which covers 69 pages. The amendment of 1892 put an end to such wasteful and out of date methods.

This amendment, which is still in force, is rather ambiguously worded.¹ The general clause of the Missouri constitution, which makes it a judicial question whether in any given case a general Act could have been made applicable, comes first and then follows a list of enumerated subjects on which special Act cannot be passed. This arrangement of the clauses makes it possible to construe the amendment to mean that the courts are to decide what constitutes a special Act in the enumerated cases that immediately follow. The first clause of Sec. 33, which reads, "The legislature may repeal an existing special or local law, but shall not amend, extend or modify any part of the same," is an absolute limitation. It is this clause which effectually prevents any changes in the existing special charters. By another clause the incorporation of cities as well as villages by special act is forbidden.

The adoption of this amendment left the cities of Minneapolis, St. Paul, and Duluth in a serious predicament. Their charters were out of date, confused, and ill-adapted to meet the requirements. The legislature could proceed only by general acts to grant relief, but a measure which met the needs of the three larger cities at the same time was not easily devised, considering the differences in their former charters, and existing rivalries.

¹Art. IV, Sec. 33.

In January of 1895 the Tri-City Convention met in Minneapolis. It was practically a general mass-meeting of citizens of St. Paul, Minneapolis, and Duluth, interested in the charter situation. At that meeting three committees were appointed; one to consider and prepare a plan for a tri-city charter act; a second to prepare a general charter act for the incorporation of cities; a third to draft an amendment adopting a home rule provision. Nothing came of the first plan. The second committee prepared the Howard Bill, which became a law in that year.¹ This law may be adopted in any village or city, having 1,000 or more inhabitants, by popular vote. It provides for a council form of government with the usual specially enumerated powers. The Act has been voted upon in three places: Red Lake Falls, in 1897; East Grand Forks, in 1898; and Morris, in 1903; and was accepted by the first two named.² Curiously enough, the city of Red Lake Falls, according to a certificate filed in the office of the Secretary of State, proceeded to amend this Act of the legislature at an election held Sept. 7, 1909. It seems that a charter commission was appointed, which drafted an amendment to the Act of 1895 as if it were a charter formed under the home rule plan, and this amendment was carried at the election by a vote of 90 to 25. The procedure is a somewhat summary method of disposing of statutory and constitutional limitations by a city election.

The third committee of the Tri-City Convention favored a constitutional amendment permitting cities to frame their charters. Mr. F. N. Stacy was the chairman of that committee and is largely responsible for the importation of the home rule plan into this State. The amendment prepared by the committee was in-

¹Laws of 1895, c. 8.

²Records of Sec. of State.

troduced into the Senate by Mr. Sheehan of St. Paul as S. F. 189,¹ and was passed by the legislature and approved at the election in Nov. 1896 and amended in 1898.

HOME RULE CHARTERS IN MINNESOTA

This Sec. 36 of Art. IV is practically a copy of the Missouri provision, except that the charter commission is appointed instead of elected and except that it applies to all cities and villages instead of being limited to cities over 100,000. Under this clause, and the laws passed to carry it into effect, the judge of the district court in the county in which the town is located may appoint a board of fifteen freeholders, either on his own motion or on petition of ten per cent of the voters, to frame a charter. A charter must be submitted to the mayor within six months, signed by a majority of the commission. Such charter is then submitted at the next election. If four-sevenths of the qualified voters, voting at that election, vote in favor of the charter, it is adopted. One copy is deposited with the Secretary of State and another, after being recorded in the Register of Deeds office, is deposited in the archives of the city.

"Such charter so deposited," says the constitution, "may be amended by the city." The charter commission, which is a continuous body, the members holding office for four years, may propose amendments at any time and on petition of five per cent of the voters must do so. If the amendment is favored by three-fifths of all the votes cast at that election, it becomes a part of the charter, upon deposit of a certificate to that effect with the Secretary of State.

There is a defect in all of these home rule clauses

¹Journal of the Senate, 1895, p. 91.

of our state constitutions, in that they do not empower a city to amend its old charter, from whatever source derived. The Michigan constitution, if construed very liberally, may permit such action; but it does not do so in express terms. Under our constitution, the city must first go through the form of adopting a charter. The charter commission may, of course, submit the former charter, with or without amendment; but it is difficult to make the voters understand why they should vote to adopt a charter, already in force. If only a few slight changes are wanted to meet some requirement, not popularly understood or appreciated, but nevertheless a detail of pressing necessity to some department of a large city, the voters are indifferent and neglect to vote. It requires four-sevenths of all the votes cast at an election to adopt a charter, and three-fifths of the total votes cast to adopt an amendment. Therefore, every vote not cast in favor of the charter or the amendment submitted is counted as against the proposition. This constitutes another defect in the original Missouri constitution, and which has been copied by Minnesota and several other states. The vote required should be four-sevenths of the votes cast upon the charter, not four-sevenths of all the votes cast at the entire election at which the charter happens to be submitted. A majority vote would be perfectly safe and more democratic.

The plan has been in operation for a little more than a decade in this state. During that time 36 cities and villages have framed and adopted charters. Information on the subject is so difficult to secure that the entire list is here included, with the year when the new charter was adopted.

1.	Barnesville	June 1898
2.	Blue Earth	Mar. 1899
3.	Duluth	Feb. 1900
4.	St. Paul	May 1900
5.	Moorhead	May 1900
6.	Fairmont	Mar. 1901
7.	Willmar	Nov. 1901
8.	Fergus Falls	Mar. 1903
9.	Ely	Mar. 1903
10.	Austin	Mar. 1903
11.	Sleepy Eye	Dec. 1903
12.	Waseca	May 1904
13.	Rochester	Aug. 1904
14.	Cannon Falls	Feb. 1905
15.	South St. Paul	June 1905
16.	Bemidji	Sept. 1905
17.	Renville	Jan. 1906
18.	Crookston	July 1906
19.	Staples	Sept. 1906
20.	Winthrop	Jan. 1907
21.	Two Harbors	Feb. 1907
22.	Breckenridge	Mar. 1907
23.	Northfield	Mar. 1907
24.	Hastings	Apr. 1907
25.	West St. Paul	May 1907 ¹
26.	Granite Falls	Dec. 1907
27.	Ada	Feb. 1908
28.	Benson	Mar. 1908
29.	St. Cloud	Apr. 1908
30.	Montevideo	June 1908
31.	Ortonville	Sept. 1908
32.	Brainerd	Nov. 1908
33.	Alexandria	Jan. 1909
34.	Glencoe	Feb. 1909
35.	Lake City	Mar. 1909
36.	Virginia	June 1909

The census of 1900 indicates that there were 265 incorporated villages and cities in Minnesota in that year, with a total population of 591,765.² Outside of the three large cities, there were three cities of 8,000 and under 25,000; six had over 4,000 and under 8,000; ten had between 2,000 and 4,000; forty-two had over 1,000 and under 2,000; and the remaining towns, 201 in number, had less than 1,000 inhabitants. A number of villages have been incorporated since then. This shows that only a small percentage have taken

¹West St. Paul filed Nov. 4, 1907, and filed again June 11, 1909.

²Census, Population, Vol. I, Pt. I. p. LXVI.

advantage of the plan, and at least eleven of these towns were villages, ambitious to become cities, and so were forced either to reincorporate under the Act of 1895, or adopt a home rule charter. There is no record kept of those cities which have framed charters and failed to adopt them. There are many of them, and some, like Minneapolis, have failed more than once. All the remaining cities of the state are still operating under special charters, which the legislature cannot amend or extend.

ATTEMPTS TO FRAME A HOME-RULE CHARTER IN
MINNEAPOLIS

A study of the Minneapolis charter elections is instructive. There have been five, and they were held in 1898, 1900, 1904, 1906, and 1907, respectively.¹ All, excepting the last, occurred in November, at the same time as the regular state and national elections. The results were as follows:

Year	Total	Against	For	Required
1898	32,878	8,287	8,756	9,738 6-7 ²
1900	40,029	13,795	10,571	23,029
1904	40,917	7,690	15,758	23,383
1906	41,121	8,531	20,000	23,498
1907	16,206	9,251	6,955	9,261

These figures speak for themselves, but they do not tell the whole story. They show that the charter was defeated, not where it was defeated, nor how, nor why. The charters submitted differed, of course. That of 1898 was a radical departure from the existing one, but the others were very conservative. The charters of 1906 and 1907 were practically the existing char-

¹Council Proceedings, Vol. 24, pp. 593-613; vol. 26, pp. 471-79; vol. 30, pp. 629-39; vol. 32, pp. 669-79; vol. 33, pp. 603-10.

²Under amendment of 1896.

ter with a few immaterial changes. Applying to the charter the same rule that we do in case of candidates, the figures show that the charter carried three out of five times, and in 1904 and 1906 by a vote of more than two to one. On the other hand, had the four-sevenths rule been exacted of all candidates for city offices many would have been defeated at these elections. In fact, we could not have elected the mayor in more than one recent election.

The results of the charter elections are graphically shown in a series of charts, which were designed for class room use and are not reproduced herewith. Blue was used to indicate the vote for, and red to indicate the vote against, the charter. Each precinct is colored to show how the majority voted. When the result was a tie, or within a few votes of being a tie, the precincts show blue and red bars crossed.

These charts show how strongly localized and persistent each vote has been. The distinctly residential districts supported, the down town districts opposed, the adoption of every charter submitted; with very few minor variations. Even the border districts, which were nearly tied, continue so. A map of St. Paul, showing the results of the mayoralty election in 1906, shows a similar localization of votes.

Another ray of light is shed over the Minneapolis charter elections by a map showing the distribution of foreign born and native born of native parents by wards. It shows that those wards where the foreign born are greatly in excess, were nearly always in the opposition column; while those wards, in which the native born of native parents largely prevailed, favored the adoption of the charter consistently. In fact, if the chart, showing the distribution of these two elements of the population, had been colored by

precincts, instead of by wards, the areas where the foreign born prevail would conform almost exactly to the areas of constant opposition to the charter; and the areas where the native born of native parents dwell would conform, almost exactly, with the areas of consistent support of the new charter.

It should be noted, of course, that the vote actually cast against the charter is not a full measure of the opposition sentiment; while the vote actually cast in favor is a measure of the supporting strength. The reason for this is that a vote cast at the election but not on the charter was just as effective an opposition vote as one actually cast against it. This was generally understood.

NATURE OF THE HOME RULE CHARTERS OF MINNESOTA

An examination has been made of each one of the thirty-six home rule charters so far adopted. This analysis shows that the charter commissions have been eminently conservative. A few innovations have been introduced. The City of Two Harbors in 1907 adopted the initiative in ordinances on the petition of fifteen per cent of the voters; the referendum, on all except emergency ordinances, on the petition of seven per cent of the voters; and the recall in case of all elective officers, on petition of twenty-five per cent of the voters, when a special election must be called within thirty days.

The charter of Rochester empowers the district court to remove any elected or appointed city officer on complaint of fifty freeholders. The charge may be malfeasance, corruption in office, or any cause for removal stated in the charter, such as obtaining city contracts. If sustained, the court is to declare the office vacated.

Several cities have a purchasing agent. The power is usually conferred on the city clerk or auditor, as in Bemidji and Breckenridge.

The Austin charter adopted a rule similar to the New York law, which restricts the right to vote on all bonding, or money loaning propositions, to actual taxpayers.

In all other respects, the new charters follow the well known models. Every one of them is a charter of limited powers, with from thirty to ninety enumerations. The charter of Ortonville alone contains a general grant of powers not limited by the enumerations. About ten of them vest the appointing power in the mayor. The others vest the power in the council or divide the offices between the council and the mayor. The council type thus prevails. In many of the small cities, the common council consists of the mayor and aldermen, the mayor presiding. In some cities the mayor votes only in case of a tie, in others he has a vote on all matters, and the veto power besides.

The influence of the village form of organization, which was established by the Acts of 1883 and 1885 and subsequent amendments, is very evident in many of the smaller cities.¹ This law which governs villages today provides for a Board of Five Trustees, who have power to appoint all necessary officers and boards. They can establish a fire department, a police department, a board of health, provide water works, sewers, parks, public buildings and pass all village ordinances. The trustees act by majority vote and are really a commission, very similar to the commissions in some of the Texas cities. This village organization applies to places having between 200 and 3,000 inhabitants.

¹Revised Laws of 1905, Ch. 9.

The Works bill, passed by the last legislature, authorizes home rule cities to adopt the so-called "commission form" of charter.¹ Neither this law nor the law of any other state has so far attempted to define a commission form or type of charter. The Minnesota Act confers no new power upon cities, which they did not have under Art. IV, sec. 36 of the constitution. It is merely a legislative declaration that a so-called commission charter is not repugnant to the constitutional limitation requiring that all home rule charters must make provision "for a mayor or chief magistrate, and a legislative body of either one or two houses." But in the last analysis the Supreme Court will have to decide that point.

Eleven of the home rule cities have amended their charters, some two and three times. St. Paul voted on fifteen changes in 1904, only six carrying; on nine in 1906, of which the first and last carried; in 1908 one carried.

The decisions of the courts of this State, dealing with the home rule charters and the ordinances made in accordance with them, show a very liberal spirit. The charter provisions have been upheld, even where they were not in strict compliance with the State laws in every detail.² The tendency of the Supreme Court has been to carry out the spirit as well as the letter of sec. 36, Art. IV, and allow the cities the greatest measure of local authority. The rule followed is stated in the Waseca case of 1907. It is to the effect that the provisions of the home rule charters upon all subjects proper for municipal regulation prevail over general statutes, relating to the same subject matter, except in those cases where

¹Gen. Laws, 1909, Ch. 170, p. 181.

²Grant vs. Beresford, 94 Minn. 45; American Electric Co. vs. Waseca, 102 Minn. 329.

the charter contravenes the declared public policy of the State.

The Court, in *Hunter vs. Tracy*,¹ decided in 1908, upheld a statute which applied to all cities of 10,000 or less, but excepted cities having home rule charters. This decision is relied upon to sustain the public domain bill under which the city of Minneapolis is given power to condemn the property of the gas company.

CONCLUSION

In conclusion, I have these suggestions to make:

Art. IV, Sec. 36, needs to be amended, permitting cities to amend former charters no matter under what law these were obtained, and changing the rule governing the count of the vote from four-sevenths (or three-fifths in case of amendments) of the total vote cast at that election to four-sevenths or three-fifths voting upon the charter or amendment. A majority vote upon the adoption of a charter or an amendment would be still better.

Unless that change is made, some cities of this State having out-of-date special charters may be unable to secure charters that meet their requirements until some public calamity arouses the people.

It is evident, furthermore, that so long as the home rule charters attempt to specify each particular power conferred, amendments of a trivial nature will have to be made frequently. These rarely carry at an election. The city should be given ample power in the charter to attend to all strictly municipal affairs in a general grant, and this grant should be liberally construed by the courts, not technically and narrowly. The constitution and laws of this state fully authorize the giving of ample power to the city governments, but the charter commissions,

¹104 Minn. 378.

following the traditional charter models, have failed to improve their opportunities. The result is that home rule charters have not secured actual home rule for the cities, because of hampering charter restrictions.

It is becoming more and more evident that the executive and administrative authority in our cities is vested in too many officers and boards, each independent and practically responsible to no one. The executive and administrative officers should be more permanent and better equipped by training and experience for their work. The mayor and the heads of the departments should have seats in the council, but no vote. They should have the right to take part in all discussions in the council, to frame and introduce ordinances in the same way as a committee of the council, to draw up and present the annual budget subject to reductions by the council, but not to increases, and they should be jointly and severally responsible to the council for all their official acts. The council should have the right to question any head of a department after due notice upon all matters concerning his department. The mayor should be chairman of an administrative commission in which should be vested the power to shape the policies of the city, to take the initiative in legislation and in making appropriations. All appointments should be made under civil service rules by the heads of the departments. The number of elective officials should be greatly reduced. In fact there should be no elective officers excepting the members of the council, mayor, and the heads of 5 to 7 leading departments. Such a plan would naturally shorten and simplify the ballot, and carry out the rule, "where you want representation, elect, where you desire skill and efficiency, appoint." Under such

a city government a technically trained and experienced body of public servants could be entrusted with the conduct of the city's business subject to the constant watchfulness and review of the city council—a representative body of citizens. Being untechnical laymen, they should have ample power of review, of investigation and criticism, but should not be entrusted with the actual work of making appointments or of administering the affairs of the city's great departments. Finally the cities, both large and small, need the expert advice, supervision, and guidance of a central state administrative office, similar in spirit and functions to the Local Government Board in England. In fact, the time is ripe in this State for an advanced step of that kind.

In the last twenty or twenty-five years, all of our states have extended their administrative functions of inspection, regulation, and direction of local affairs. Minnesota, in 1878, established the office of Public Examiner. This was the first time a state administrative officer was given power to audit the accounts of local governments in this country. The Board of Health, the Educational Department, and the various inspectors perform important functions in the supervision and direction of local authorities. The time has come in many of our states for this multitude of boards and offices to be reorganized, their functions extended and services improved. Let Minnesota take the lead.

Second Session

THE POLICE AS A FACTOR IN MUNICIPAL GOVERNMENT

ORGANIZATION AND POLICY OF MUNICIPAL POLICE.

By J. J. O'CONNOR

No dogmatic or abstract principle can be laid down for the proper organization of a police force, although the policy of a police department to be right must be unalterable.

So many considerations enter into the organizing and building up of a police department, and so many phases of the matter must be considered, that a concise disquisition on the problem is most difficult even to those with wide experience in police matters.

The great duty of any police department is to make safe the lives, the goods and the ordinary and lawful doings of the people of the city which supports it. In this duty are summed up the first essentials of its organization and its policy. Its organization is the means by which its work is performed and its policy the way in which its labors are made effective.

It is true that in a way, its blue and its buttons are symbols of the might of law and the force of society, but back of all that, it is a public service institution charged with the maintaining of well regulated traffic, clean and safe streets and the welfare of the ordinary man who meets with it only on his way to and from his work. One man out of a hundred recognizes this in a vague way. He knows that he comes in contact with his police department—for it is his and what he makes it—only in the casual nod of the officer on the corner, or the clang of the patrol or

ambulance gong. Year in and year out it touches his life only as it makes his comings and goings secure and safe.

In its more spectacular side he sees it only when it stretches its fire lines to insure the safety of his person and the goods of his neighbor, or when it risks life and limb to prevent the casualty of the highway.

It is true that the power to detect offenses once committed is an essential part of the police protective system, but at most it is secondary, for the average citizen needs protection from his own carelessness or the recklessness of others a hundred times, to once where he comes in contact with real or attempted actual crime.

A policeman must first learn that he is a guardian of public peace and property; second, that he is to prevent crime; and third, that it is his business to catch offenders against the law. To fully perform his duties, a policeman must be a compendium of knowledge of everything pertaining to the city by which he is employed. When organized upon the basis that all citizens are equal before the law, and that special privileges are to be given to no one, that political favors are not to be received or given, then is a police force brought into existence that is a guarantee against much crime, and a city's chief asset.

Regarding the proper discipline for policemen, a wide difference of opinion has been held by different cities. New York, (as well as many other cities) has endeavored to install the military discipline, or that which pertains to the army. From reports of the metropolitan press it would appear that such a system has resulted in failure. A police force is not organized upon the same basis as an army, and consequently the same discipline cannot, with success, obtain. While it adds to the picturesqueness of a po-

lice force to have the men drilled in the fine points of marching and wearing their uniforms in a dressy manner, yet there are other considerations of much more value. In the army, in times of peace, a soldier's principal duty is preparing for war through drills, dress parades, etc. A policeman is not only always prepared for war, but he is constantly engaged in a war with those preying on society. And in this war he must show all the cunning of an Indian fighter in avoiding ambushes and pitfalls which are constantly laid for him by those whom he hunts. It is a case of the law-breaker pitting his wits against the brains of a police department. When it is considered that some of the most acute minds are devoted to unlawful enterprises, it will readily be seen that the police require a high standard of intelligence and honesty to hope to cope with law-breakers.

The old couplet, "Man's work is from sun to sun, but woman's work is never done," applies to a policeman. A policeman's work actually is never done. It is true he secures a few hours' respite each day, but if during his period of off watch, his services are required, he rushes into his uniform and appears on duty.

To maintain a police department at the high standard of efficiency required for good results, is a herculean task. The policeman is not like the workman or clerk, working under the eyes of a boss. He is sent out on his tour of duty knowing that the absolute reliance of his superiors has been placed in him, and that any dereliction of duty may result in the commission of crime which his vigilance would have prevented. Thus if a policeman is not a man upon whom absolute reliance can be placed, he is worse than useless, as the section of the city he is supposed to be guarding is left without police protection, and that

without the knowledge of those charged with the protection of the city.

While I am firmly convinced of the necessity of organizing a police force upon a merit system, yet I doubt the wisdom of civil service in its usually accepted sense. The tenure of office of a police officer should continue during good behavior and while satisfactory work is being done. But I do not believe in that tenure of office that will keep in uniform a policeman of purely negative qualities,—the man who never commits an overt act, but who never shows by his aggressiveness and ability that he may in fact be charged with the protection of that part of the city included within his beat. There are many men of irreproachable character, who, nevertheless, make failures as policemen. Under civil service such men would be hard to get rid of, in spite of the fact that they represent just so much dead wood. Under a merit system, if a man cannot produce results his services may be dispensed with.

A good police force cannot be organized in a day or a year. It is a matter of long growth, a weeding out of incompetent and inefficient officers, in fact, a survival of the fittest. A man's value as a policeman increases at least in the ratio of the square of his years of service. Nothing but hard experience can teach a policeman the ways of the underworld or the best methods to pursue in handling his district. Inasmuch as continued service is of such value to a police department, anything that will help to make attractive the hard life of a policeman is of value to a city. The pensioning of aged and disabled officers is of inestimable value in promoting honesty and efficiency in a department. The pay of policemen is not large enough to enable many of them in these days of high living expenses to save any considerable amount from

their salaries to provide for old age. With a pension system guaranteeing their future as long as they are honest and trustworthy, a policeman will not jeopardize his position by questionable practices.

A well organized police force can have but one policy, and that is right dealing. If by the policy of a police force its methods are meant, then an opportunity arises for honest differences of opinion. Perhaps nothing in municipal government is so generally misunderstood by the public as the methods employed by the police in the pursuit of criminals. The barbarous theory that the law requires an "eye for an eye and a tooth for a tooth," has resulted in a general misconception of the methods of the police.

A play dealing with a certain phase of the police department was presented in this city some time ago, which revealed what was supposed to be the third degree methods of the police to enforce confession. Probably ninety-nine out of every hundred persons who saw that play accepted its portrayal as absolutely true to life. As a matter of fact an honest police department is as much concerned in proving a man's innocence as his guilt. An officer who would attempt to railroad any man to the penitentiary to make a record for himself is an enemy to society. There are times when the police feel justified in using rather harsh methods to extract information. But such methods are not employed in an attempt to put the rope around an innocent man's neck, but to find the guilty man, so that society may be protected from his further ravages.

Herein arise many occasions when the police are charged with being venal. A man of well known criminal tendencies may be arrested charged with the commission of a crime. After a full investigation by the police, it may develop that he is beyond doubt

absolutely innocent of participation in the crime in question. It is then manifestly the duty of the police to move for his discharge. Yet there are people so imbued with the idea of the dishonesty of the police that such dismissals are thought to be from ulterior motives. It is true that many times innocent men are arrested, charged with crime. That condition cannot very well be helped. It is the plain duty of the police to arrest or keep under surveillance a man suspected of a crime until his innocence can be determined or the real offender arrested. Herein arises the complaint of many would-be reformers that the police will not permit any man who has once served in the penitentiary an opportunity to regain his feeling of respectability. When a burglary is committed it is but natural that the police should detain for a time any man in the city whose known specialty is burglary. It is possible that at times half a dozen men may be arrested for a crime that is known to have been committed by one man. But through the detention of the half dozen it is often that the right party is discovered.

The detection of crime is, as the ordinary man sees it, spectacular and sensational, but as viewed from the inside, it is in most cases ordinary. Where one crime is mysterious and commands the public attention, a dozen or fifty are obvious and attract little or no notice beyond the mere announcement that someone was assaulted or robbed and that the guilty person or persons are under arrest. This is not said to belittle the work of the detective force of any police department. There are spectacular cases both in St. Paul and Minneapolis, as in other cities, where detective work has unraveled seemingly blind mysteries. Not to multiply instances, the murder of Katherine Ging in Minneapolis, and the murder of Christian

Schindeldecker in St. Paul, are examples of where the police powers of the city, going behind their ordinary duties, have worked out solutions of complex problems. The point it is sought to make is not that these cases are unimportant—they are not—but that they are infrequent and relatively negligible as compared with the thousand and one points where the police department of the city is called upon to protect the average citizen. To make the point clearer, the Ging and Schindeldecker murders were great crimes against society. Public opinion demanded that they be probed and the offenders punished; but after all, to the rights and welfare of the average citizen, they really meant little beyond so much newspaper space, as compared with the safety of down town street crossings and the enforcement of the ordinary laws of sanitation and hygiene.

A police department which directed the sole work of its organization and its policy to the detection of crime, mysterious or otherwise, would fail of its purpose. Its greatest usefulness must be found in the regulation of the individually minor, but collectively, dominant things in the city life.

In my experience as a police officer, covering a long series of years, I have seen these two related branches of police work make mutual progress. Of the two, I believe the protective branch has gone forward the faster. This does not mean that I think the skill of the police department to ferret out crimes has fallen back, but that conditions and the demands of public opinion have forced protective measures to the front. I believe that the representative police officer of to-day is the guardian and not the avenger, and that in so far as this is true, the public is getting the worth of the money it expends. The average citizen does not need avenging once in a lifetime. Prob-

ably in the average life, vengeance is not needed at all. The ordinary man does need protection against himself or against others every day of his life. The man whose business is police work and who does not recognize this distinction, is sadly behind the spirit of his name.

The question of cause and effect aside, the tendency of the day is, without doubt, to make the patrolman more and more of a judge. This idea has reached its culmination in Cleveland, where, under the so-called "Golden Rule" orders of Chief Kohler, the patrolman is, in practical effect, a magistrate. In cases of drunkenness, no arrests are made except where it is necessary to protect the safety of the victim. Those who are arrested are released as soon as they are able to take care of themselves. In all cases of minor crime, which make up a great part of the ordinary day's work of the police officer, he is expected to use great care in making arrests. Opinion in regard to this plan, even in Cleveland, is divided. All are agreed that in the case of a few minor offenders, the policy of not making arrests might work for good. Some believe this is true of the entire idea, while others contend that this clemency is abused by those who offend against the laws deliberately. In my judgment, the Golden Rule idea, as applied in Cleveland, is certain of failure. I have the greatest respect for Chief Kohler, and regard him as one of the most efficient police officers in the country, but I cannot agree with him in his extreme policy.

The municipal or police court hardly comes within the scope of the police organization, and yet, the two are so closely related and mutually interested in so many ways, that a word as to the court may be permitted. The police court supplements the work of the police force. It, too, is a part of that same pro-

tection to the rights and safety of the individual which has been growing up in police work proper. Here, too, it is the most significant fact in the evolution of the lower criminal court. The police occasionally make blunders; more often their discretionary powers are not wide enough to allow them to release prisoners who might better be free. Then the police judge, with his greater authority, has the power to remedy the wrong, or to extend mercy where that seems the best thing for the general good. A police court and a police department working along the same lines and in accord as to policy, help each other and make an efficient working force. Where they are at odds, the public suffers, and the good of both is much impaired. I am glad to say that the relations which exist between the police court and the police department in St. Paul are most cordial. We have never had occasion to complain of a lack of support, and the court is helpful to our work in the highest degree.

The catching and convicting of the offender who has committed crime will always stand out in the public mind as the one great and essential duty of a police force. It is an important matter, too. To a man familiar with this question of detection, its development along the lines of prevention rather than mere conviction is perhaps the most significant fact in his experience. The familiar detective story deals with crimes of mystery. An offense is committed. There are certain facts and clues, and, following these through a maze of complications, the offender is finally run down. There are such cases in actual police experience. I have already cited two of them familiar in local history. They stand out in police work. They mean showy success or failure. They carry the element of human interest, and public attention focuses upon them. In a sense, they are

a striking test of police efficiency, and when they occur, they demand the very best brains and the very best efforts at hand. But after all, from a purely police standpoint, they are accidents, and hardly more directly connected with the routine of protective work than having his house burned is the familiar experience of the ordinary citizen.

If you will permit me, for convenience, to class as thieves all forgers, counterfeiterers and burglars alike, I will state as a general truth that the thief furnishes the police department, (outside of drunkenness), with fifty per cent of its work. Formerly the police were content to catch as many men as possible after crime had been committed. Now, in response to public demand, it makes it its business to know the men likely to steal, and to be familiar with their habits and their haunts, thus directing their principal efforts to the prevention of crime, so far as possible. The known thief is not a dangerous thief. It is the first offender who is hardest to detect. Let one hundred men with known occupations, at scattered times and scattered places commit one hundred burglaries, and, excepting by accident, not one of them is likely to be detected, unless he tells it himself or is a blunderer in disposing of his loot. If one man were to attempt one hundred burglaries, by the natural law of chance he would sooner or later betray himself. Once known as a convicted criminal, his entire status is at once changed. The crook who has been once known to the police as a criminal is for all time a marked man. When his picture, his measurements and his finger-marks are in the Bertillon galleries, he may not in the future live honestly, but if he does not, his detection is almost as certain as fate. He lives under constant watch, and he knows that for him crime is a very dangerous experiment.

Before this rigorous protective system was perfected, the aristocrats of crime were bank burglars and counterfeiters. Now these professions are practically wiped out. Occasionally criminal tramps, the yeggmen, will blow a country bank to pieces and escape with the money not destroyed by the bungling use of nitro-glycerine, or in some obscure cellar or garret a small band will be found molding rough and greasy near silver. That is all that remains of crime's aristocracy.

Identification which enabled the secret service men of the Government and the police and Pinkertons to know every man capable of engraving a bogus bank note plate, or likely to blow a bank safe, drove the experts, who were naturally best known, into prison or out of the business, and the bunglers naturally came to grief. The police department which makes minute knowledge of crime and criminals an essential part of its policy, is most likely to meet with success.

I had not intended to discuss the ethical side of the police department, but through a discussion of its policy, I have gone somewhat into methods, and necessarily the ethics of police work.

It is my judgment that the police officer, on the average, has an earnest desire to do his duty; that he understands and feels his responsibility, and regulates his life and conduct accordingly.

IS THERE A SOUND BASIS FOR POLICE DISCRETION IN THE ENFORCEMENT OF LAW?

By EDWARD F. WAITE

American disregard for law has become an international by-word. It marks not only the outbreak of the mob but the daily life of citizens, high and low; not only the work of the police, but that of those ulterior repositories of the law's efficiency—juries, grand and petit, and sometimes even courts. That it is an admitted national fault, and the root of evils recognized and deplored by all thoughtful persons, will be assumed without further comment. Of this all too general trait a conspicuous aspect is non-observance of law on the part of those executive agents of state and municipality who are especially charged with its enforcement. On every side the citizen witnesses violations of penal laws and ordinances which the police see and ignore. The failure to suppress or punish these unlawful acts breeds contempt for law in the mind of the on-looker. The vicious circle seems complete—disobedience to law on the part of Citizen A; acquiescence on the part of Officer B, the executive agent of the law-making power; apparent violation of official duty by B in countenancing A's disobedience; the natural conclusion on the part of Citizen C that the law is not intended to be obeyed; his no less natural refusal to accord to it a sanction which it only pretends to demand, and his disobedience, in turn, whenever he thinks he can count upon the immunity

granted to A. This demoralizing effect upon Citizen C is due to his belief that B, the police authority, is permitted to nullify the rule laid down by government acting through its legislative branch; and to the no less cogent force of the supposedly bad example of Officer B in failing to perform his sworn official duty. When government seems to admit not only that its solemnly prescribed rule for the conduct of citizens is a bluff, but also that its chosen representative is not expected to do the thing which he is ostensibly set to do, government is certain to share the contempt with which every fairly normal mind regards a sham. Gov. Folk thus states, from the standpoint of a believer in strict enforcement of law, the dangerous tendency to which I am now referring: "If a dramshop is allowed to remain open at a time the law demands it to be closed, then the gambling laws cannot be consistently enforced, then other offenses denounced by the law must be tolerated, then comes grafting by officials for overlooking these violations, then legislators imbued by the same spirit sell their votes for bribe money, and a reign of corruption follows." Those who hold the opposite view of police policy surely must admit that the peril thus pointed out is not a chimera.

But let us assume that Officer B, in failing to interfere with Citizen A, is in fact acting, under all the circumstances of the particular case, not only in good faith but in substantial accord with official duty. If Citizen C can be made to understand this, one element of the supposedly bad and therefore demoralizing example will be wiped out. Hence if it is not always the duty of B to interpose his authority for the suppression or punishment of A's unlawful act, C ought to know it. On the other hand, if B's inactivity is without excuse, a general and clear recognition of that fact would tend to secure amendment of his

conduct. We see thus the importance of the question of police discretion. If there be no such discretion—if it be the universal duty of the constabulary to lay the hand of suppressive and punitive authority upon every act which contravenes the mandate of society expressed in law—it is of the utmost consequence that this be well and commonly understood. If, however, there be a margin of discretion within which the police may act or fail to act as in good faith seems to them wise and right, it is of equal importance that this discretion should be recognized and its limits be defined—so far as any line of human conduct may be laid down in advance.

The prevailing state of mind on this subject is not creditable either to the courage or the acumen of those to whom the public has a right to look for leadership. The community is divided into two groups. One group insist that all laws must be uniformly enforced, and that whenever the police fail to do this they are derelict and forsworn. But it is never difficult to cite to those who assert this view some particular law or ordinance to which they are unwilling to apply their strict and simple rule. They say with reluctance that while their theory is incontestable it will not always work in practice. The other group declare that of necessity there must be judicious discrimination in the enforcement of many penal laws and ordinances, though they hesitate to openly avow that the law does not always mean what it says. Both groups arrive, from different directions, at the same paradox, an irreconcilable conflict between correct theory and necessary practice.

But does not this paradox involve an unthinkable contradiction in terms? Must not true theory and right practice ever concur? If actual exceptions contravene the rule, must it not be because the rule is too nar-

row? And if the rule is correct, in content and limitation, must not apparent exceptions give way? Strangely enough, so far as I have been able to learn, no student of social science has yet had the temerity to publicly claim discovery of that happy middle ground where Integrity of Law and Administrative Expediency may dwell together in harmony. I therefore crave the indulgence due to an inquirer who foregoes the security of beaten paths. It will not do to cut the knot by saying: "Repeal our foolish and needless laws!" By all means do this, and when it is done there will be little trouble about police discretion—if it is done just right—a matter about which opinions might differ. But in this inquiry we must deal with the law as it is.

The functions of urban police may be broadly divided into four classes: (1) the execution of process—chiefly criminal warrants of arrest and search; (2) ministerial services rendered in behalf of the public health, convenience or security, such as removing sick and injured persons to hospital, assisting foot passengers at crossings and directing traffic, restoring lost children, reporting the presence of known criminals; (3) service as peace officers in quelling and preventing affrays, disorderly assemblages and riots, and protecting persons and property from imminent trespass; (4) apprehending without warrants and bringing to punishment those who have committed acts which the community recognizes as essentially criminal; (5) duties in respect to the enforcement of laws and ordinances through which the state and municipality have sought to regulate the conduct of citizens, in matters that affect the general welfare but are not inherently criminal. It is obvious that debatable questions of discretion can arise only with reference to functions of the fifth class. In the complex con-

ditions of modern life there is a large and increasing number of instances in which the community assumes to control the conduct of the individual in the interest of public health, safety, morals or convenience, or for the conservation of property. Regulations are therefore established by the state and municipal legislatures, in the exercise of their so-called "police power," defining the duties of citizens in these matters, and imposing penalties for disobedience. As there is no distinction between the legal obligation of a state law and a valid municipal ordinance, no discrimination between the two should be made in this discussion. The term "law" should be understood as including statutes and ordinances alike. Behind the ordinance stands the authority of the state delegated to the local legislature; and it has been generally held by the courts that the police are not mere agents of the city government, but officers acting under the sanction and control of the state, with equal powers and corresponding duties in the enforcement of general and local laws within the municipality.

Let it be observed that we have eliminated from the discussion those laws providing for the punishment of offenses against society which are universally recognized as injurious, or *mala in se*. No question can arise in any civilized community in regard to the duty of the constabulary to diligently aid in repressing and punishing such crimes as larceny, robbery, arson, murder. These acts are recognized by the traditions and customs of society as always wrong and intolerable, independently of written laws; and in seeking to prevent and punish them the state exercises a more fundamental function than the police power—the right and duty of self-preservation. Organized society could not exist if such essentially anti-social acts were tolerated. Here, manifestly, is no field for police discretion.

Still another class of laws may be dropped from our consideration—those relating to crimes against private persons or property; not, of course, because of any lack of obligation on the part of the police to afford protection here and aid in securing redress, but because private interest can be relied on to enforce such laws, or at least to prevent the claim of discretion as an excuse for delinquency on the part of those whom the citizen employs to hold watch and ward in his behalf. It is only when the offense is against the public, and is an act not essentially criminal but prohibited by law in the interest of the common welfare, that police authorities ever defend their inactivity behind the shield of an alleged discretion. But in this field the claim of discretion is practically universal. Even the few police administrations which have enforced some laws that were not backed by a manifest public sentiment have omitted to enforce many others. If this be always wrong the police are not the only offenders. Various administrative officers are charged with the execution of penal laws, and all claim the right to discriminate.

It should be understood that throughout this discussion we are considering under the term "discretion" only the right of the police to omit enforcement of law when and because they believe that thus their duty to the community will be best performed. One of the dangers of granting to any official the exercise of discretionary power is the ease with which it comes to be abused; and doubtless much that seeks to pass as honest police discrimination is sloth or cowardice or corruption. But our question admits of difference of opinion only as it assumes good faith. Again, it should be borne in mind that if discretion exists it must be vested in the responsible head of the local police administration. Discretion scattered

about among hundreds of captains and sergeants and patrolmen would indeed be difficult to mark out by any recognizable boundaries. The duty of the subordinate is obedience. If he cannot conscientiously obey let him resign. Such discretion as his superior grants him he may exercise, and no other. It is when we direct our inquiry upon the very head of the department, the official—mayor or commissioner or superintendent—who directs the police and must take responsibility for them, that our question becomes one of law and morals, rather than of mere administrative discipline.

Once more, by way of still further clearing the ground: we are speaking only of such law enforcement as is practicable. When by reason of special difficulties attending the enforcement of a particular law, or the inadequacy of the police in numbers, enforcement is really impossible, there is of course no opportunity to exercise discretion. So also when regulations for the conduct of citizens cannot be enforced without withdrawing the police from other duties of primary importance, and leaving the community defenseless against the depredations of uncaught criminals, the lesser duty must give way to the greater—and this not at discretion but always and of necessity. The first duty of organized society is to protect the person and property of the citizen. The recognition of the fact of impossibility or impracticability calls for sound judgment, but not for that choice between available courses which is properly called discretion.

Let us now restate our question from the present standpoint; for only when we see the precise content of the problem can we hope to advance toward its solution:—

May a police administration with power to enforce

a penal regulation for the conduct of citizens in a matter affecting the public welfare but not essentially criminal, refuse to do so because of an opinion, held in good faith, that the interests of the community will be best served by non-enforcement? If so, what are the grounds and limits of such discretion? If not, why not?

Laws of the character referred to are limitations upon individual freedom of action, in matters not primarily involving the personal rights of others, accepted by the community as defining social customs or modes of conduct which are recognized by public opinion as so clearly conducive to the common welfare that their general enforcement under penalty is just and right. For convenience they may be referred to as police restrictions, and breaches of them as police offenses. While the violation of any one of them is a crime in the broad connotation of the term, in its narrower and more popular use this is true of but few. It is only in a technical sense that you may be charged with a "crime" because you failed this morning to clear the snow and ice from your sidewalk, or drove your automobile for half a block on the left-hand side of the street. Public opinion changes with the changing development of society; but modification of the written law does not keep pace with these variations; often it lags far behind. Not only so,—it is a familiar fact that laws are enacted which represent popular clamor rather than public opinion. How often do our law-making bodies "pander to the moral sense of the community," in the familiar phrase of the Tammany statesman, by passing laws at the bidding of the saints which are expected and even designed to be freely broken at the inclination of the sinners. Thus it occurs that at any given time there are differences in the nature and degree of the public opinion back

of different police restrictions. Some have practically solid and active support; for example, laws forbidding public indecencies of the grosser sorts, or acts or omissions universally recognized as extremely dangerous to public health. Some have a general but merely passive support,—the public approves but seems indifferent. The great majority of police restrictions are of this sort. Some have no support at all. These are what may be styled “dead laws,”—enactments that have been permitted to remain upon the statute books so long after their ground in public sentiment has crumbled away that they are universally regarded as legal curiosities rather than real laws. Examples of this sort are the extreme provisions of certain so-called “Sunday laws” that have survived in some communities. Still a fourth class continue to be the subject of such general controversy that public opinion regarding them remains divided and fluctuating. Most sumptuary laws belong to this class.

Concerning the enforcement of police restrictions backed by solid and active public sentiment no question arises. Police discrimination is not claimed, and if claimed would not be tolerated. As to laws which by common consent are dead, there is no thought of enforcement on the part of the police, nor any criticism of their inactivity by the public. Such enactments have ceased to be truly laws, and therefore are not within the field of executive action. They should of course be taken off the statute books; but when careless legislatures neglect to do so there is in that fact no mandate to the police. It may be said that the way to secure their repeal is to enforce them. But the only enforcement for this purpose which would be possible would be merely nominal,—just enough to call attention to the presence of the resur-

rected corpse. No reasonable mind would sanction general and continuous enforcement of such a law for the mere purpose of securing for it the rite of legislative burial. Desirable as would be the end, the means would be attended with too much absurdity and injustice. Here enforcement rather than non-enforcement would bring government into contempt. Such enactments should be dragged from their graves only to the legislative chamber, for formal acknowledgment of that abrogation which is already an accomplished fact. While there may be many laws that are tending toward the limbo of defunct and forgotten statutes, there are at any given time few that have actually reached it. For it should be borne in mind that we have been speaking only of those that are wholly without support in public opinion. If there be *any* such support the law belongs in another category, and different considerations apply. The recognition of laws as dead, calls for the nominal exercise of executive discretion; but I mean to restrict the class to those where the marks of death are so plain that there can be no chance for honest error; and with the recognition of this fact the field for discretion ends.

Before considering further the larger class of police restrictions which are supported by a practically solid but passive public opinion; and the less numerous but important class concerning which public opinion is divided, let us examine the nature of police responsibility for the enforcement of any law. (1) The police may warn those who have offended against repeating the offense; those who are offending against continuing, and those who appear to be on the point of offending against consummating their purpose. (2) They may arrest without warrant one who commits an unlawful act in their presence; and in the case

of a few offenses which by the severity of the penalty attached have been raised to the "bad eminence" of felonies, they may also seize and hold without warrant the probable offender whose guilt they have not actually witnessed. (3) They may collect evidence and submit it to the proper legal officer with a view to prosecution,—i. e., they may make complaint. In no one of these steps do their legal powers differ from those of the private citizen; and if anywhere peculiar authority is sought to be conferred upon them, in respect to arrests or complaints, such authority is of questionable constitutionality. In some instances the civic duty of the private citizen might constrain him to warn, arrest or complain; but he has delegated this office to the police, whose superior duty lies not in their authority, but in the fact that they have accepted commissions as public guardians and entered into a solemn obligation to faithfully perform the services for which they are employed.

Warning is a preventive measure; arrest and complaint are primarily punitive and only incidentally preventive. If given in evident good faith, warning is likely to be effective, for law breakers are timid in the face of genuine police condemnation. Warning is manifestly a discretionary act. There can be no uniform obligation to warn or not to warn. Often it is not only the most considerate but the most successful way to secure obedience to the law. Where obedience is the end really sought there will be no serious question about the exercise of discretion in this regard.

It is the conclusion of experts in the study of crime that only a small proportion of criminal acts, even of those concerning which there is no complaint of lack of vigilance and activity on the part of the

police, are ever brought into court by arrest, complaint or indictment; and of those that are prosecuted comparatively few are punished. This is notoriously true as to police offenses. If for one month all known infractions of penal laws should be prosecuted, the judicial functions of government would be paralyzed by the burden. The manifest impossibility of pursuing all offenses is sufficient ground for the conclusion that the law does not contemplate that all shall be pursued. The end sought is to eliminate from the conduct of citizens the act which is declared unlawful. Judicial punishment is but a means to this end. Punishment as mere social vengeance has no place in the dealing of the modern world with the lawbreaker. The ideal is the infliction of the least amount of penalty and upon the least number of persons, which will secure general obedience. If, as a broad proposition, this be doubted, surely it will not be questioned in its application to police offenses. In this field, certainly, punishment beyond what is necessary to correct the individual offender and deter others is not demanded by enlightened public opinion nor contemplated by the law. This principle is a familiar guide to courts, grand and petit juries, and prosecuting officers; and it involves the exercise of discretion. That this discretion is sometimes abused does not negative the fact that its existence is universally conceded. But why should we freely grant discretion to courts, juries and prosecutors and wholly deny it to police initiative? It cannot be the duty of the police to set in motion the punitive machinery of the law in every case of violation of police restrictions. If they arrest or complain of as many offenders against a given law, and as often, as is needful in order to secure its general observance, they dis-

charge their proper function. To take a familiar example: it would be absurd for a police administration to arrest every driver of an automobile who, under any circumstances, exceeds the legal speed limits, or passes another vehicle on the wrong side. If in making arrests just discriminations are made, always based upon the relation of the act to the end sought to be accomplished by the law; and if arrests are made as generally as is necessary to secure uniform obedience to the law, the police have done their duty. Mistakes will doubtless occur. There will be some arrests that should not have been made, and impunity will be unwisely granted to some offenders,—especially where, as in Cleveland under the “Golden Rule policy” of the present chief, the police take upon themselves the extra-execution function of discharging from custody after virtual arrest, for reasons of clemency that are more properly for the consideration of the prosecutor or the court. Nevertheless, here is a wide and appropriate field for police discretion.

There are some offenses which in their nature are not casual acts but habitual repetitions of the same or like acts. A degree of persistence is of their very essence. Failure of the police to take action in such cases, is in effect to license the unlawful act as repeated by the same person and under similar conditions. Here we have the focus of our problem. Here failure to act, when power cannot be denied, is invariably sought to be justified on the ground that the law involved is not a true expression of public opinion. That is, the executive not only falls back upon the position (the soundness of which the limits of this paper compel me to assume without discussion) that no law is permanently effective if it be not backed by a decisive public opinion; but he goes two

steps further. He declares, in effect, that because of this fact he is under no official obligation to even try to enforce such a law; and he assumes to decide that the law in question is such a law.

The law is a growth, constantly taking on new adaptations required by changed conditions and enforced by public opinion. This growing process is seen not only in the work of legislatures, but in even more vital aspects in that of the courts, exercising what is perhaps their most delicate judicial function. Says Mr. Justice Holmes in his lectures on "The Common Law": "The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less traceable to views of public policy in the last analysis. And as the law is administered by able and experienced men, who know too much to sacrifice good sense to a syllogism, it will be found that, where ancient rules maintain themselves in the way that has been and will be shown in this book" [i.e., in the face of contemporary conditions and customs evolved in the progress of society] "new reasons more fitted to the time have been found for them, and that they gradually receive a new content, and at last a new form, from the grounds to which they have been transplanted." I quote his words because of their admirable exposition, both in what they state and

what they imply, of the caution with which the courts will recognize changes in the law that have not received legislative expression. He is speaking of the common or unwritten law, but the same considerations apply to that part of the written law which stands in the comparatively fixed form of constitutions. But, with respect to statutory law, which in the regularly ordained way,—i. e., by legislation,—may be made to quickly respond to changes in the popular will, even the most careful judicial modification is rarely made by the courts; while for a court to practically repeal a valid statute or ordinance by ignoring it would be instantly and universally condemned as a flagrant breach of official duty. May the function of repeal *de facto*, which is thus denied to the judicial branch of government, be properly exercised by the executive? There are intelligent and good people who claim that it may; but when called upon for reasons they usually say—"Theory is against it, but it is necessary and unavoidable." But if correct theory is against it, it is neither necessary nor unavoidable, for a true theory of conduct will take full account of the facts of life. Broadly speaking, laws ought to be uniformly enforced by those who have voluntarily assumed the function of enforcing them. This is a theory or rule of conduct approved by reason and morality, and— if explicit sanction were needed—confirmed by numerous decisions of the courts. The following language of Judge Goff, in a decision rendered in the Supreme Court of New York (*Peo. v. Herlihy*, 35 Misc. Rep. 711) and affirmed in the Appellate Division and the Court of Appeals, expresses the general attitude of the courts with respect to the duties of the police: "Can it be seriously contended that a captain of police is not a public officer, or that he is not bound in duty

to enforce the law, or that if houses of ill-fame are notoriously maintained in his precinct it is not his duty to suppress them, or that if he willfully neglects to suppress them he is not guilty of a neglect of duty, or that for such neglect of duty he is not amenable to law? If these propositions can be successfully maintained there is an end to the prosecution, and, indeed, there is an end to all responsibility of the policeman as a public officer. But such is not the law, for of necessity to the very existence of organized society a public officer is bound to a strict performance of and responsibility for the duties which devolve upon him; * * * and if he willfully omits or neglects to do that which by law he ought to have done, he commits a crime."

We have recognized certain exceptions to the general rule, examined the ground on which they rest, and eliminated them from the discussion of the fundamental question at which we have now arrived. We have reached the consideration of a class of laws where failure to enforce is tantamount to executive repeal. Either this is always right or always wrong, or sometimes right and sometimes wrong. The burden of showing that it is ever right is clearly upon those who make that claim. Their arguments, presented with various details, are these: 1. Some legislative enactments were never supported by the public opinion which must be back of every effective law. They have been forced upon the statute books by a minority of zealots or partisans who seek to impose their own narrow notions upon the majority of their fellow citizens. The majority do not approve these laws and therefore should not be compelled to obey them.

2. Some laws which may have represented public opinion when enacted are obsolescent on account of

changed conditions, and since they do not now have general approval they may be ignored for the same reason last suggested.

3. Some state laws, although in form of general application, have been passed at the instance of certain localities where public sentiment favors them and are unwarranted interferences with the personal liberty of citizens of other localities, where they have no substantial support. It would be unjust to enforce such laws in communities where they are not wanted.

4. Some laws exist by common consent but with a tacit understanding that they are to be called into activity only in extreme cases. It is not practicable to embody in legislation discriminations which the legislators intended and the public demand should in fact be made. These discriminations must therefore be made by the police.

5. Some laws, although enacted for purposes which meet general approval, are found, when their execution is attempted, to be productive of more harm than good,—sometimes by working injustice in particular cases; sometimes by demoralizing business; sometimes by driving vicious persons who are determined to break the law to such concealment that desirable regulation of their conduct which would be possible if they were tolerated but closely watched, becomes impracticable. Such laws ought not to be executed because the net result of their execution would be bad.

These arguments are in substance all I have ever known to be adduced, and I think I have stated them fairly. The first two rest upon the assumption that at a given time a law which is determined by extra-legal executive inquiry not to express the will of the majority has no obligatory force,—a proposition so fraught with anarchy that to state it is to expose

its fallacy. If this were true constitutional government would be at an end. Besides, there is the obvious danger that the executive, however honest, may be mistaken as to what the will of the majority really is. Quoting again from Gov. Folk—"What seems to be public sentiment may be and often is the clamor of the lawless who have a selfish interest in violating law." And too often the clamoring lawless are "our leading citizens." The third argument ignores the fact that the authority of the state reaches all its citizens alike. Municipal legislatures, which are the creatures of the state, cannot abrogate state laws; still less can communities do so without even the form of legislation. They may refuse to obey, but the legal obligation of the law is still upon them. Otherwise public order would give way to chaos.

The fourth argument assumes the right of the executive not merely to construe the law but to ascribe to it a meaning contrary to its terms. The authoritative interpretation of law is vested by our constitutions solely in the judiciary. For the executive to claim it is a dangerous usurpation. If a mayor may say that any penal law,—even a mere police restriction,—does not mean what it says; and if he may still persist after the courts have declared that it *does* mean that, stability and certainty vanish from the domain of criminal law.

So far as the fifth argument recites a fact—that the enforcement of some laws sometimes works harm rather than good to the community—its truth must be admitted. But does the conclusion follow? Doubtless it might in some emergencies for reasons analogous to those suggested in our discussion of casual offenses. But we are not dealing now with exceptional instances. Let it be kept in mind that we are considering offenses of such a nature that not to take

action against them is in effect to license them; and our recognition of the evils incident to enforcement must be narrowed down to such as are of common experience. The executive says in effect: "The legislature could not have appreciated these evils; if it had it would not have enacted such a law; whatever public sentiment is back of it, it is not the sane and settled conclusion which alone deserves to be recognized as public opinion, therefore I will not enforce it." Here he virtually repeals, because in his opinion it is bad, a law which the legislature has declared good. If our constitutional division of governmental functions amounts to anything must we not conclude that it is better to suffer the ills of enforcing unwise measures until the legislature gives relief, rather than concede to the executive the function of making laws, and that without any of the safeguards of the ordained legislative processes? Conscientious police administrators will point to the vices of gambling and prostitution. "Neither can be prevented," they say, "so long as human nature remains as it now is and has been since history began. By tolerating gambling we can regulate it,—protect those who cannot afford to play and recover money diverted from needy families or stolen from employers. By winking at prostitution we can restrict it to districts where it will do the least harm, and practices less dangerous to public health and morals than would otherwise prevail." The evils of attempted suppression still lack the demonstration of an energetic and sustained experiment; and opinion will differ as to the beneficial results of tolerance. But granting these claims, I take my stand, after no little study and somewhat exceptional opportunities for observation, upon the proposition that in the long run the evils of law enforcement are the lesser. If tolerance be the better policy let it be tolerance accord-

ing to law, even at the expense of abandoning our smug American habit of opening wide the right eye in holy horror, while we shut the left in easy toleration. The choice need not be limited to absolute prohibition and such legal recognition of vice as gives it a semblance of respectability. Enforceable laws may be so framed as neither to condone an evil nor make it always and everywhere a crime, and yet attack its worst manifestations and minimize its dangers to the community. But if we insist upon prohibiting by law what we find more harmful to try to suppress than to permit, let us stand by our professions and take the consequences, like honest, even though foolish, citizens. No evils that we will incur will strike at the roots of our cherished institutions as does our present hypocritical and anarchistic policy.

Still I hear someone say—"Your theoretical propositions about the functions of the different branches of government may be very fine, but they must give way to stubborn facts. We know that some laws, are not and cannot be everywhere and always enforced. A fact so universal must be right in practice, if not in theory." Friend, your hand is even now upon the key to the paradox. What you say is true in fact, and to reconcile it with true theory we have but to make correct distinctions. There *are* laws which cannot be always and everywhere enforced, and it is not the duty of the police to perform the impossible. Confusion has resulted because of failure to distinguish between laws they cannot enforce and laws they can enforce but do not choose to. We have already absolved them from blame with respect to the former, but it will be profitable to consider the matter somewhat further. *Quid leges sine moribus?* The maxim implies an old and familiar truth. Effective laws have their origin in public opinion, and the stream cannot

rise higher than its source. If in any community, a law is generally disapproved it cannot be uniformly enforced. The police may collect evidence, warn, arrest and complain; but prosecutors will not prosecute or present for indictment, or grand juries will not indict, or petit juries will not convict, or judges will not impose substantial sentences, or pardoning authorities will rush to the rescue; somewhere in the chain between offense and punishment a link will fail. I quote a suggestive item from a recent newspaper: "The much talked of crusade to enforce strict Sabbath laws in Kansas City, Mo., last year is now past history. The results are that of the hundreds of indictments daily issued for several weeks against theaters, corporations and individuals, four thousand were dismissed one day last week. Only nine cases have ever been tried, resulting in two convictions and seven acquittals." Where arrests and complaints by the police meet with such a result, it cannot be that it is their duty to waste time and effort in continued activity. Our question is a practical one. We seek correct theory only for its guidance to right results. It is important to determine when the police ought to proceed against offenders. When they have done so in good faith, and it has been demonstrated that other factors in the administration of the law will bring their efforts to naught, they may stop and await a clear mandate from the public before they begin again. Here is a legitimate field for police discretion,—to determine when activity ought to cease because it is futile, and when it may be resumed with the prospect of success. If the purpose be present to enforce the law wherever it can be enforced, this discretion will be freely granted by all thoughtful citizens, and errors in judgment will be easily condoned.

There is also a wide and proper field for discre-

tion in respect to the emphasis laid upon the enforcement of different laws. There must be selection:—everything cannot be done at once. As I have already said, the first duty of the police is to protect life and property. After that comes the regulation of conduct in lesser matters. Some continuing offenses, like keeping saloons open on forbidden days and at unlawful hours, or maintaining gaming devices in public places, or habitually permitting chimneys to smoke, cannot be successfully concealed. For such, a warning that is known to “mean business,” is usually sufficient. Others, like the keeping of more or less private gambling resorts, “blind pigs” and disorderly houses, often require prolonged and skillful effort before evidence can be obtained which warrants arrest or complaint. Uniformed men cannot generally get this evidence, and the more experienced detectives ought not to be set to do it,—not only because their time is needed for more urgent business, but because their efficiency in apprehending real criminals is jeopardized if they are known by the under world to concern themselves with public morals. An intermediate class of officers, commonly known as “plain clothes men,” are properly employed upon such matters; but the number available is generally so limited that activity in one direction is likely to involve necessary inactivity in others.

There is therefore, if our reasoning is correct, a sound basis for police discretion in the enforcement of law, within the field of police offenses, where alone it is seriously claimed. That basis is, with respect to casual offenses, the relation of the particular act to the purpose of the law, together with the degree of necessity for exemplary action. With respect to continuing offenses, where tolerance amounts to license, the only true basis is the possibility and practicability of

enforcement, in view of the means available for collecting evidence, and the existing state of public opinion as shown by results in prosecutions, convictions and punishments.

These conclusions will have useful application to other officials besides the police who are charged with the enforcement of penal laws. Such, however, are outside our present inquiry. Neither may we enlarge upon the evils of ill-advised legislation. Such laws promote law-breaking, while the expectation that unpopular enactments will not be enforced smooths the way to bad legislation,—each vicious practice reacting to promote the other.

As a nation we are to-day far from the ideal of the fathers, and only by clear thinking and strong purpose shall we achieve it,—“*a government,*” in the words of Washington, “*of wise, just and constitutional laws, discreetly and faithfully executed and obeyed.*”

THE STATE POLICE

By F. C. MILLER

There has been a change in our conception of the term state. Not long ago, it was thought that the state had little else to do but preserve law and order. The term *Polizeistaat* still retains the hall-marks of that political period. This conception is now a thing of the past even in Great Britain and the United States, where that idea lingered longest. The administration of Roosevelt was a distinct break with the traditional state. When he threatened Baer and the other coal barons of Pennsylvania to call a special session of Congress for the purpose of nationalizing the mines, unless they would make terms with the strikers, the new era began to dawn. Roosevelt's struggle with the so-called interests was a struggle of modern society as organized in political form against the aggressiveness of private enterprise.

Great Britain's recognition of the modern state first became evident in the establishment of the recent pension system and the radical budget still pending. In the other Anglo-Saxon commonwealths, the conception of the modern state is well advanced. This is especially true of Australia and New Zealand.

The first departure from the traditional state occurred in continental Europe. No doubt the reforms of Catherine II, Joseph II and Frederick the Great were due to a wider conception of the state's sphere

of action. Even some of the policies of Louis XIV, Cromwell and still earlier heads of states show a tendency in the same direction. But the first decisive break with tradition was made in Prussia shortly after 1806.

After Prussia had been brought to her knees in the battle of Jena, heroic remedies were proposed and to some extent carried out, to bring the state of the great Frederick on its feet again. The reforms of Stein and Scharnhorst disregarded the time-honored ideas of the state's narrow functions and regarded the general well-being as the state's primary goal, irrespective of opposing private interests. The limitation of baronical estates, the compulsory division of big estates and the creation of a soil-owning peasantry was revolutionary, but in the end proved to be the foundation for Sadowa and Sedan. Bismarck's state socialism went even farther and made Germany socially and economically one of the stablest countries in the world. Sozialpolitik, that is a program of economic and social reforms, is to-day the platform of new Germany.

From the modern point of view, the state's power is unlimited. "*Omnipotens civitas est*" is no idle phrase. It is a fact of which cognizance must be taken. The state was in a way compelled to assume absolutism, because of hostile pressure either from within or without. In Europe the pressure was from both directions. Germany, for instance, cut up into almost thirty independent states was a permanent temptation to the surrounding nations and after having been united, conquered France in the west and barbarous Russia in the east were the nightmare of German statesmen. And within were the disintegrating influences of particularism, socialism and an absolute church. A strong state became a necessity, the Prussianizing of

Germany the only means of keeping the ship of state afloat.

In the United States the pressure was wholly from within. Private interests had by virtue of a general *laissez-faire* policy become so strong as to defy the state and dominate it. During Grant's second administration and the McKinley regime, the state was in fact the servant of affiliated groups, the so-called "predatory interests." Roosevelt, like a knight of old, sprang into the arena and commanded a vigorous halt. Even he, with his courage, energy and statesmanship, even he has almost come too late, just as Cato of Rome had come too late.

The modern state police of this country is to be considered primarily as the state's agent to assert its sovereignty to the end that the general welfare may be endangered neither by the machinations of the great corrupters nor by the transgressions of the smaller malefactors. And herein lies the true significance of the state police. To interpret it differently is to misread the signs of the times. The people of this country face momentous changes, changes to some extent discernible even by the unlettered. There seems to be a growing consciousness that the state has not done its duty and has allowed to pass by golden opportunities for the promotion of the general welfare. And the people are determined that the *laissez-faire* policy must be given up and that a strong state is needed to cope with impending developments. The political rebellion of the Middle West, the growing animosity of the producing West against the distributing East, the irrigation and conservation policies, one and all are indications of a change of public sentiment with reference to the state's sphere of action. And in the widened sphere of action, new organs are needed to carry out the state's will and these

organs, I conceive to be, the agents of the state's police power or the state police.

There are, even now, organized forces in this country that go by the name of state police. Most of them, however, are a mere conventional extension of municipal police, brought into being by local conditions. But even these are of interest, as the problems they solve, or try to solve are of importance and because they may, under favorable conditions, develop into a true state police.

The state police is to be distinguished from the state controlled municipal police. Either because of inefficiency, or the current trust in new political machinery, or for mere political reasons, several states as New York, Maryland and Missouri established state commissions or commissionerships in administrative control of the city police. Whatever there was of a change, was largely a change of political submission from the city boss to the state boss. On account of the futility of the scheme no further attempts have been made in this direction. Indeed, those cities whose municipal police had been under state control have, for the most part, succeeded in obtaining independent police organizations.

There are at present three states that have a distinct state police. They are Massachusetts, Pennsylvania and Texas. The Territory of Arizona also had a territorial police force, which, however, was abolished last year (1908). The causes for the abolition of the Arizona Rangers are interesting and throw a flood of light upon the state police in general.

The Arizona Rangers consisted of a captain and twenty-six men. "At the time of the organization of the Rangers, cattle-stealing and 'horse-rustling' were flourishing industries. Train robberies and stage hold-ups were almost weekly occurrences. Murders

were frequent, in short," the captain writes me, "the general lawlessness of the territory was the reason for the birth of the ranger-service." The captain says that he took the utmost care in the selection of his men, and that he imbued his force with a corps d'esprit that subordinated personal considerations to the good of the service. Neither bribes, nor intimidation, neither the gun of the highwayman, nor the hardships of the desert, the captain says, prevented his Rangers from running down the territorial outlaws.

The force, however, was abolished by the territorial legislature over the veto of the governor, because, the captain says, the Rangers refused to do the underhand work of the great mining interests during the prevalence of strikes. In one case a sham riot was contemplated by the corporations so as to compel the rangers to use force against the strikers, who had been hitherto law-abiding. Upon the refusal of the captain, the "interests" determined to abolish the Ranger Force, in which design, as we have seen, they were successful.

Now after due allowance is made for the excusable bias of the captain, there are several facts that are significant. The governor, an appointee of Roosevelt, vetoed the bill abolishing the force and the deposed captain is to-day United States marshal of Arizona. The governor was hardly a mere politician, and the captain had hardly any ulterior motives in his attitude towards the mining companies. Plainly we have here a victory of the predatory interests over the modern state, that has to be so much more than a mere protector of vested property rights.

The Ranger Force of Texas and the State Police of Pennsylvania are mere extensions of municipal police. Their jurisdiction however embraces the whole state.

Texas has had a Ranger Force for years. If we consider the size of the state and the desperate character of its border population, it is surprising that the lawless elements have not asserted themselves more forcibly. The Adjutant General of Texas says that the entire Ranger Force of the state consists of thirty-two men located in four stations in various parts of the state. At each station there is one captain, one sergeant and six men. The pay of the men is low and they leave as soon as they can find a better opening. The demand for the services of the Ranger Force is constantly increasing. Frequently sheriffs and other local officials ask for assistance in the investigation of crimes and pursuit of criminals. In some cases, the demand is legitimate, in other cases, however, the local officials are able to cope with the situation, but for various reasons, chiefly political, shift the responsibility upon the Rangers. The adjutant-general seems to consider the Ranger Force as a temporary institution, for he says: "It will be many years before the state can dispense with the service of the Rangers in Southwestern Texas and along the Rio Grande River."

"The Pennsylvania State Police Force," says Deputy Superintendent Lumb, "is a growth of the peculiar labor conditions in this commonwealth. The vast mining interests and iron industries have brought into our state, thousands upon thousands of foreign laborers, many of whom are criminals, from Southern Europe, and all of whom are ignorant of our laws and social conditions. The many small towns in the coal regions and about the steel and iron works were, until 1905, without proper police protection and many crimes were committed, the perpetrators of which were never brought to justice. This foreign element was also foremost in violating the Fish and Game

laws of this commonwealth, and in various blackmailing schemes amongst their own people, which have been referred to as the 'Black Hand' operations. The organization is largely recruited from the regular army and about eighty per cent of the men have seen service in Cuba, the Philippines and China. It is a non-political organization and its discipline is very similar to that of the regular service."

The Act of the General Assembly No. 227 of 1905, establishing the force, provides for a state police force of four companies, each consisting of a captain, a lieutenant, five sergeants and fifty men, the whole force to be under a superintendent and a deputy superintendent.

In 1906 the force made 808 arrests, in 1907, 4388, and in 1908, 5028. The most numerous arrests were made for drunkenness and disorderly conduct, assault and battery, rioting, carrying concealed and deadly weapons, illegal fishing, vagrancy, larceny, trespass, felonious assault and fraud and false pretense. The rigor of the discipline is manifest from the numerous desertions and resignations, the force being enlisted for two years, and from the fines, which amounted to \$1,372.91 in 1908, collected from the men.¹

The reputation of the Pennsylvania State Police is not very high in some quarters. The former captain of the Arizona Rangers says: "The Pennsylvania Constabulary are (sic) of a different stripe than (sic) our boys. You couldn't hire any ex-Arizona Ranger to go into the Pennsylvania Constabulary for all the money in that great state. They (sic) seem to have been organized for the sole use of the rich to ride down the poor. . . ." In spite of the evident bias, there is some reason for the above statement, as is patent to anybody familiar with the history of strikes in the Keystone state.

¹Reports of the Penn. State Police for 1906, 1907 and 1908.

The Massachusetts District Police differs materially from the state police systems of Pennsylvania and Texas. Whereas the Pennsylvania State Police and the Texas Rangers are, as we have seen, conventional police bodies, the Massachusetts District Police, though still retaining to a large degree conventional police functions, is, in a measure, a unique institution, representing to a considerable extent the enlarged sphere of state activities. Massachusetts, which has been blazing the trail for so many of our state institutions, has also been the first in the field to provide the state with a police machinery to cope with the more complex social and economic pathological manifestations of our day.

The Massachusetts District Police, as at present (1909), constituted, consists of:

- I. The Chief, in charge of the entire force.
- II. Two departments, the Detective and Fire Inspection Department and the Inspection Department Proper.

The Detective and Fire Inspection Department is headed by a deputy chief and consists of two divisions: the Division of Detectives, having fourteen members, and the captain of the Steamer Lexington, and the Division of Fire Inspectors, having one chief and six fire inspectors.

The Inspection Department Proper is headed by a deputy-chief and consists of three divisions: The Division of Public Buildings Inspectors, having thirteen members; the Division of Factory and Workshop Inspectors, having twelve male and two female inspectors; and the Division of Boiler Inspectors, having one chief and nineteen inspectors.

The whole active force consists of fifty-two, and

the clerical force of fourteen members. The total actual expense for 1908, including all expenses for travel and investigation, amounted to \$159,302.61.

The Division of Detectives, with the exception of two officers has ordinary police work. The detective has a beat of one or two counties, but may be detailed to other localities. He helps the local police and works also independently. In nearly all serious crimes and felonies, the local authorities either put the entire case in charge of the district police or ask for its assistance. The two officers with exceptional duties are the tramp officer and the captain of the Steamer Lexington. Chapter 568 of the Acts of 1908 provides that "one member of the detective department shall give his whole time to enforcing the provisions of law relating to the arrest and care of tramps, except that in case of emergency he may be temporarily assigned to other duties." As this is a new departure no data are as yet available. The captain of the Lexington is on the steamer from April 15th to October 15th. Last year he heard of but one complaint of illegal fishing, which he investigated and found to be a mere nominal offence. During the winter months, he works on criminal cases in the Boston office.

The second division of the Department of Detectives and Fire Inspectors is along new lines. Though the six inspectors and the chief are occasionally assigned to criminal work, the ordinary work of this division is the investigation of the origin of fires.

Here is the summarized report of one inspector for 1908:

Total number of fires investigated.....	301
Total number of fire inquests held.....	52
Total number of days on special duty.....	2

Total number of arrests caused for arson, malicious burning and intent to defraud insurance companies 4

The first division of the second department or the Inspection Department Proper is that of Building Inspectors. There is no state department or officer in this state with similar functions. The building inspectors supervise and regulate also very minutely moving picture machines, the booths in which they are used and the operators. The following report of a building inspector for 1908 will give a good idea of the work done in this division:

Buildings, or establishments visited.....	792
Inspections made	536
Males employed, 2313; females, 2049, total.....	4362
Between 14 and 16 employed: males 177; females 198; total	375
Orders issued, written 87; verbal 195, total.....	282
Orders complied with, written 67; verbal 185; total	252
Orders in process of compliance, written 20; verbal 10; total	30
Cases and complaints investigated including accidents	19
Building plans received	61
Changes in plans ordered or recommended.....	12
Certificates issued for buildings.....	8
Moving-picture booths inspected	3
Moving-picture machines inspected	4
Moving-picture machines tagged	3
Moving-picture operators examined	25
Moving-picture operators licensed	18
Prosecutions made	1

Logic was never a strong point with New England institutions. In this respect Massachusetts is the true

daughter of England which also lacks the clear-cut institutional distinctions of France and Prussia. Accordingly we find that the building inspectors are, to some extent, used for factory inspection and the factory inspectors for building inspections. Still the main work of building inspectors is with buildings and the main work of factory inspectors is with the employees in the buildings. Both can issue orders which must be complied with. As far as I know, Minnesota has made no provisions for moving-picture machines and their operators.

The Division of Boiler Inspectors has to enforce very important regulations. Considering that the state has thousands of boilers always at work, it is not surprising to note that Massachusetts has twenty boiler inspectors and an office force of seven people who devote all their time to the inspection of boilers and the clerical work in connection with it.

In all there are 181 rules, regulating in the minutest detail the structure, placing, position and work of boilers, in order to safeguard the lives of employees and the general public.

The Massachusetts District Police is a mere beginning in the right direction of police development. So far, no other state has imitated the Massachusetts District Police. Other states have similar organs, but they are differently organized and do their work in a slightly different way.

Minnesota and most other states consider the state police as a formulated expression of extended police power. After the modern state's will had been expressed formally, organs were created which were to carry out that will. But these organs were not in their ensemble denominated police. Nor were they all put under a central authority. The extension of the police power of the state is of recent origin and

various extensions are perhaps only tentative. It would therefore be unreasonable to expect a rigorous self-contained system.

But before we proceed in our discussion of the self-assertion of the modern state by way of its police powers, it may be advisable to arrive at a clear understanding of what is meant by the term police power.

Political scientists tell us that there are no rights existing independently "of the state and beyond its control."¹ From this point of view, any regulation or restraining of the freedom of action of the individual by the state may be called police power. But as the state's goal—if it be proper to talk of a state goal at all—is the public welfare, it may be said that the police power of the state is that restraining and regulating influence upon the natural and common liberty of the citizen in the use of his faculties and property as best promotes the public welfare.²

The public welfare may also be promoted by the use of the corporate powers of the state. The sovereign state may advance the general interests by holding and disposing of property, by making contracts, by employing agents, by rendering aid and service by means of the establishment of public roads, fire service, hospitals, schools, etc., by suing and by bestowing like powers upon subordinate political divisions. This positive sphere of state action is by general consent excluded from the term police power. As soon, however, as the elements of restraint and compulsion enter the state's action, it is exercising police power proper, as in case of sanitation and building regulations, dairy and food laws, hunting laws, etc.³

¹Willoughby, *The Nature of the State*, pp. 130, 131, etc.

²Freund, *Police Power*, pp. 17, 18.

³Freund, *Police Power*, pp. 17, 18.

From the legal point of view, "police power is to be devoted to the protection of the lives, health and property of citizens and the maintenance of good order."¹ "It is the power of the state to make all manner of reasonable laws for the welfare of the community and the good people thereof."² Police power "is that inherent and plenary power of the state which enables it to prohibit all things hurtful to the comfort, safety and welfare of society, subject in its exercise to constitutional limitations."³ "Police power is not divestible by contract or otherwise."⁴ "Private rights must give way to police power for the benefit of the whole body politic."⁵

Of course police power is restricted by the constitutional restrictions, as those referring to religion, free press, free speech, free assembly, right of carrying or keeping arms, unreasonable searches and seizures, *ex post facto* laws, etc.

The famous Oregon classification as to the various ways in which police power may be exercised by the state is interesting. The Supreme Court of Oregon holds in *Commissioners v. County 6 Ore.* 222 that the state may use its police powers for: (a) The prevention of offences, (b) calamities, (c) and epidemic diseases, for (d) charity, (e) interior communication, (f) public amusements, (g) recent intelligence and (h) registration.⁶ This classification however is now obsolete, but it is interesting to notice how far the courts, even under the spell of the old-fashioned traditional state were willing to extend the police power.

A still more definite idea of police power may be

¹*Patterson vs. Kentucky*, 97 U. S. 501.

²*Commonwealth vs. Algu*, 7 Cushing, 53.

³*Town of Lake View vs. Cemetery Co.*, 70 Ill. 171.

⁴*Commonwealth vs. Canal Co.*, 66 Penn. 41.

⁵*Water Works Co. vs. Water Works Co.*, 14 Fed. R. 194.

⁶Bierly, *Police Power, State and Federal*.

obtained by distinguishing it from other restraining powers possessed by the state. Police power differs from the criminal law in the conventional character of its restraint. In contrast to the disciplinary powers over institutions and officers, the police power "restrains the citizens at large, who have not forfeited a part of their liberty or surrendered it by their voluntary act."¹ It differs from territorial sovereignty in the fact that it "is exercised over members of the community for whose benefit the government is established, and who have an absolute right to remain within its boundaries."

And finally it stands in contradistinction to the taxing power by impairing "liberty otherwise than by the mere exaction of a sum of money."²

Police power, as exercised by the state, is used in only three ways, by setting up positive standards and limitations, by issuing and enforcing regulations so as to insure compliance with the law, and lastly by positive prohibition. Standards and limitations are set up as norms, with which all must comply. Evil is prevented by checking a tendency towards it. A margin of safety or neutral zone is established between that which is permitted and that which is sure to lead to injury. The standards of quality put up by the dairy and food laws illustrate the first way in which police power is exercised. The prohibition of lotteries and ticket brokerage illustrate the third method. The second method, that of regulation is the most important. The working basis of this method is prevention by publicity. Licenses, notices, marks and signs, reports and registration, inspection, notice of a prejudicial character, notice of an incriminating character, and compulsory association are mere varieties

¹Freund, *Police Power*, p. 23.

²Freund, *Police Power*, p. 20.

of the same thing, control by regulation or prevention by publicity.¹

In the discussion of state police, we naturally turn to Minnesota. Our state is, in many respects, politically advanced and has shown, in the past, great wisdom and sound statesmanship in a number of important questions. The careful husbanding of some of its resources, especially those bearing upon the school and University funds, is spoken of with admiration in other parts of the country. In times of stress and tribulation, when the state's credit was low, the outlook dark and the spectre of repudiation made its appearance, Minnesota acted with consummate statecraft in resolving to honor dollar for dollar of the state's debts.

Minnesota has about grasped the idea of the modern state and has made considerable headway in providing itself with organs and instrumentalities to give expression to its will over and above the traditional spheres of state activity. The state has various commissions and commissioners which execute the police power of the state in a way which, considering existing handicaps and obstructions and general political inertia, must be pronounced efficient.

Of the various boards and commissions, the Board of Game and Fish Commissioners is, perhaps, one of the most important. The commission consists of four members appointed by the governor. The executive management is in the hands of an executive agent, elected by the commission, who is assisted by a number of deputies and wardens.

In its work the commission uses all three methods of executing the police power of the state. The first method is used in establishing an open and closed

¹Freund, *Police Power*, p. 23.

season and in limiting game bags and the catch of fish. The open season for moose and deer for instance is from Nov. 10th to Dec. 1st. And during this open season only one male antlered moose and only two deer may be shot by one resident hunter.

The commission prohibits, among other things, the selling and buying of game at all times, the sale of brook-trout and bass, the hunting of deer with dogs, etc.

The commission regulates among many other things the shooting and shipping of game animals and birds by the issuing of licenses and coupons to resident and non-resident hunters, the possession of illegally obtained game and fish, etc.

Like nearly all our other state commissions, the Board of Fish and Game Commissioners goes even beyond its proper sphere, in collecting and diffusing such statistics and information as will be helpful in the conservation of game and fish. It issues reports, splendidly illustrated, which inculcate love of true sportsmanship. The commission is always willing to furnish expert speakers on its staff for public discussions of true sportsmanship. At the meetings of the game and fish wardens, papers are read which stir up enthusiasm and love for the work and which give practical experiences from field, stream and forest of great value to those officials.

Because of the character of its work, the board can go a step farther than most other commissions. It not only protects and preserves the existing game and fish, but it also propagates such game and fish as it deems of public value. At present, the commission is agitating the establishment of a game-preserve in St. Louis county especially for the preservation of the moose.

With reference to prosecutions of violators of the

fish and game laws, the commission reports that all officials, except many justices of the peace have shown commendable zeal. The justices of the peace are inclined to an excess of leniency that frequently amounts to a disregard of the law.

In this connection, it may be proper to call attention to the fact that in local obstructions by officers, dependent upon the political good will of the locality, the modern state finds one of its greatest obstacles to the full assertion of its sovereign powers. As we shall see, a number of other commissions find the same difficulty.

During the biennial period ending Dec. 1, 1908, the Board of Fish and Game Commissioners with the aid of the courts:

1. Placed under bonds 2 persons.
2. Inflicted and collected fines amounting to \$10,728.50.
3. Inflicted and caused to be served jail sentences, amounting to 1005 days.

The commission seized during the same period:

1. 21,338½ lbs. of fish.
2. 924 birds.
3. Several hundred carcasses, saddles, hides and heads.
4. 1352 furs and about 3000 nets.

An admirable feature, which this commission shares with all others of the state, is to be found in its list of recommendations to the governor and legislature. Improvements are suggested and absurdities, contradictions and impossibilities pointed out. Data are thus furnished, garnered from experience, for sane legislation in the future.¹

¹Reports XI, XII and First Biennial, Board of Game and Fish Commissioners.

An exhaustive treatment of every commission at this occasion is out of the question and hereafter only the most salient features of each will be pointed out.

Far more important than the preservation of our economic wild animals, is the preservation and improvement of our domestic livestock. The State Live Stock Sanitary Board is but six years old and its main work is the protection of the health of the domestic animals of the state. All local boards of health are, to a considerable degree, under its jurisdiction and may be required to cooperate with the board. The board may kill or quarantine any domestic animal infected with certain diseases, and compel the transportation companies not to bring any infected animals into the state. No pure-bred cattle can be sold unless the board has issued a certificate of health for the same. During the year ending July 31, 1908, the board tested for tuberculosis 27,216 heads of cattle and killed 2490. During the same period, 513 animals were killed for glanders. The state paid \$34,836.86 to the owners of the animals killed.

In its recommendations to the governor, the board urges an emergency appropriation to be used only in case of epidemics—certainly a wise proposition.¹

The Forestry Commissioner has been an especially valuable and efficient officer. When he took office some fourteen years ago, there was little or no care taken of the forest resources of the state. He studied the forestry systems of Europe, especially those of France and Germany, and in his annual reports are to be found clear and enthusiastic accounts of the results of scientific forestry in Europe. Travelling throughout the length and breadth of the state, he interested the leading men in his policies, and gave lec-

¹Fifth Annual Report, Minn. State Live-Stock Sanitary Board.

tures to students, teachers, editors and other bodies of people interested in forestry. In this way he created a healthy public opinion and succeeded even in gaining over to his point of view some of the wealthiest lumbermen of the state.

Because of his enthusiasm for his work and his personal suavity, he has been very successful in placing a number of laws on our statute books, very favorable to the conservation of forests, as, for instance, the law making it compulsory to burn slashings; the law making it compulsory upon county-attorneys and magistrates to prosecute offenders of the forestry laws, after having been notified; and the law compelling the railroad companies to keep, during dry seasons at least, one patrolman for each mile of its road through lands liable to be overrun by fire. The forestry commissioner was likewise successful in inducing President Roosevelt to establish the Superior National Forest Preserve, comprising a tract of over a million acres. Perhaps one of his greatest merits is his staunch championship of the state's police power with reference to private property. Says he in his report for 1907: "Although the question in its application to forestry has not been agitated in Minnesota, it is, nevertheless, a well established principle of law, that the state has the constitutional power—known as the police power—to regulate the use of private property, so as to promote the public welfare." He quotes with favorable comment the opinion of the Supreme Court of Maine, which, upon the request of the legislature for advice as to the constitutionality of a law restricting the cutting of timber upon private lands by their owners, held that such a law would be constitutional, saying among other things, that it is "a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however abso-

lute and unqualified may be his title, holds it under the implied liability, that his use of it shall be so regulated that it shall not be injurious to the equal enjoyment of others, having an equal right to the enjoyment of their property, nor injurious to the rights of the community."¹

It might be expected that a state which takes so much interest in the preservation of its forests against all destructive agencies, especially fire, would be equally solicitous in the protection of buildings, houses and personal property against fire. But such is not the case. Though the fire marshal is a man who realizes the responsibilities of his office, he can do very little in real protective work. He is sadly hampered by the lack of funds, the whole appropriation for the department being only \$6,300 to Wisconsin's \$33,000 and Ohio's \$60,000. Only \$2,000 are available over and above the salaries for investigation and detective work.

The law regulating the service of the fire marshal is also lax and vague. The fire chiefs of organized fire companies, for instance, may report the facts concerning the origin, cause and accompanying circumstances of fires, or not, for no penalty is attached for non-compliance. The opposition of local authorities, especially of elective officers and magistrates is likewise a great handicap of the fire warden, who has been brought to consider, by circumstances beyond his control, frequent disregard of convincingly clear and complete evidence as a matter of course.²

The oil inspection department is, to some extent, unpopular just now. The chief executive is displeased with the expenses of the department and with the character of its work. The expenses of the de-

¹XIII and XIV Annual Reports, Forestry Commissioner.

²First Annual Report, State Fire Marshal.

partment are about \$100,000 a year, more or less. The state derives, however, an income of about \$40,000 from fees. Still \$60,000 is a large sum for the inspection of practically but one article of general consumption.

As for the efficiency of the department, the governor may also be right, for the records of the department, upon the assumption of office by the present incumbent, were in an unsatisfactory condition and, though the present inspector is making a determined effort to make the department more effective, the traditions of the department are apparently not what they ought to be. This may be due to the fact that the office was formerly a fee office and was usually considered as a very important political asset in the payment of political obligations.

One interesting extra-legal development in this department is worthy of notice, as it illustrates the tendency of accomplishing certain work extra-legally, for which no provision of law has or can be made. The development in question is "an arrangement made some years ago with states adjoining Minnesota," by which "oil in barrel shipments is permitted in some instances to be sold in this state on the inspection of the state from which the oil was shipped," the Minnesota department "collecting the fees therefor." The adjoining states by the same arrangement treat Minnesota-inspected oil precisely in the same way.

The oil department uses the police power of the state by setting up a certain standard to which all oils must conform, a so-called fire test of 120 degrees Fahrenheit.¹

The Commissioner of Insurance has general supervision of the business of insurance within the state

¹Biennial Report, Oil Inspection for 1907 and 1908.

and sees that the laws relating to the conduct thereof are enforced. The commissioner has full powers to regulate the companies and fraternal associations of the state to the end that the security of the funds intrusted to them is in no way jeopardized. The commissioner has practically autocratic powers over the companies and associations and, in cases of emergency, will regulate and control their affairs in any way he deems best, even if he should not have the explicit sanction of the law. The courts of this state and other states will rarely overrule the decisions of insurance commissioners, even if they should be of an extra-legal character, the presumption being that they are governed by provisions of law or, at least, by valid mandates of public policy.¹

Almost the same support is given by the courts to the Dairy and Food Commissioner. But a few years ago, the markets of the state were flooded with spurious articles of food, adulterations and substitutes. As there was a great profit in the sale of these productions, there were many interested parties opposed to the enactment of dairy and food laws and who, after their enactment, hampered the work of the commissioner. Though there are still a number of adulterations and substitutes in the markets of this state, there is to be noticed a marvelous improvement in the purity and genuineness of food and dairy articles offered for sale. Indeed Minnesota leads in some respects especially in the purity of spices and canned goods.

The commissioner "shall cause to be enforced all provisions of law designed to prevent fraud and deception in the manufacture and sale of human food and drink and the several ingredients thereof, and shall

¹Report of Insurance Commissioner, 1908.

have authority to take all proper educational measures to foster and promote the manufacture and sale of pure food products." The commissioner has, by law, free access to all places of food manufacture, food preparation, food storage and places where food articles are sold. He also has free access to stables and pastures and to cars and other food carriers. The commissioner works largely by educational methods, by setting up definite standards, and by regulations, supplemented by systematic inspection. The standard set up for jam, preserves and marmalade, articles especially liable to adulteration is typical of the commissioner's work. "The terms jam, preserves and marmalade, as used herein shall be deemed to apply to a product consisting wholly of the fruit specified, preserved in a syrup made of cane sugar and pure water and containing no other ingredients."

In its educational work the commission has obtained excellent results in giving lectures and instructions to dairy-men, butter and cheese-makers and other manufacturers and dealers of food articles. Contests in dairy products have been regularly held in the various counties of the state under the auspices of the commissioner and have contributed very much towards raising their quality and reputation.

Perhaps the most efficient means of enforcing the food and dairy laws of the state is the publication of the results of inspection and the outcome of legal proceedings.¹

The Railroad and Warehouse Commission asserts the police power of the state in a very effective way. Though some charges have been made against the commission, and have perhaps been substantiated, public opinion can hardly fail to approve of the gen-

¹XII Annual Report, Dairy and Food Commissioner.

eral official conduct of the commission. The law says: "The commission shall inquire into the management of the business of all carriers and warehouse-men subject to their supervision, and shall keep itself informed as to the manner in which the same is conducted, and shall obtain from such carriers and warehouse-men all information necessary for the performance of their duties." The commission has judicial power and may compel the production of books, papers and records and the attendance of witnesses. Appeals, however, may be made to the district court. The commission must, on complaint, and may, on its own motion, investigate the reasonableness of rates and tariffs. It may fix joint rates, which are *prima facie* evidence of reasonableness and which cannot be changed without the consent of the commission. The tariffs made by the commission are in force during the pendency of an appeal. The classification of freight and numerous other matters bearing upon railway service are also under the control of the commission.

Severe penalties may be inflicted for non-compliance with the law or orders of the commission. For failing to make a full report, for instance, of the annual business on or before Sept. 30, unless additional time be granted by the commission, every common carrier forfeits for each day's default \$100.

In order to give the state some intelligent idea, especially for purposes of taxation, of the present value and cost of reproduction of the 10437.8 miles of railroad in Minnesota (1907) including equipment, terminals, in fact all physical property of the companies within the state, the commission employed an expert engineer who, by very careful methods, came to the conclusion, that the cost of reproduction of the roads would be \$411,000,000 and that their present

value was \$360,000,000, figures which the companies for obvious reasons found too low.

The Railroad and Warehouse Commission has also jurisdiction over the grading, storage and shipment of grain. Its efficiency in this regard has been so great that neighboring states have accepted its gradings without question.¹

The department of the public examiner has been divided into two departments by the last (1909) legislature, the department of examiner of public officials, institutions, departments and corporations paying taxes on gross earnings and into the department of bank examiner. The wisdom of this division is questionable and it is believed to be due less to a real necessity of differentiation but rather to the pressure of interested parties, which were incommoded by the rigorous enforcement of the law. Here seems to be an instance of the emasculation of efficient public service by an organized and influential minority. The fact that the department recovered and brought into the state treasury from such sources as gross earnings, taxes, illegal expenditures, fee shortages, and examination fees of municipal and financial institutions, a volume of revenue, approximating \$120,000 and also recovered almost \$40,000 for local treasuries from an examination of county, city and school district accounts explains perhaps the division of the department. The expenses of the department were only \$73,000 or less than one-half the amount of public revenue recovered.²

The Tax Commission of the state is only a few years old and has already done excellent work for the public good. Though it possesses extensive powers over all public officials connected with taxation,

¹XXIV Annual Report, Railroad and Warehouse Commission.

²XIII Biennial Report, Public Examiner.

its chief work has been educational. The commissioners have given instructions in various parts of the state and have been very successful in bringing some sort of system into our assessments, which had been formerly without rhyme or reason. The commission took a first-hand valuation of practically all the real estate and, to some extent, of the personal property of the state.¹ From the data so obtained, it was enabled to provide the state with an almost uniform system of valuation, doing away with glaring inequalities between the different sections of the state and with unjust preferences of favored individuals and corporations in the same locality. Its *chef d'oeuvre* is perhaps the valuation of the iron properties in the northern part of the state, raising it to about the same sum as the assessed valuation of the city of St. Paul.

The duties of the State Board of Health are two-fold, administrative and departmental. Under the first "is the work of advising local boards of health and directing the enforcement of the sanitary laws and regulations." Under the second belong laboratory investigations, sanitary engineering and vital statistics, lines of work which are chiefly of value in serving as a guide to the administrative work of the board.

The primary duty of the state board of health is to protect the state against communicable diseases. It does so by the enforcement of regulations, which having been approved by the attorney-general, have the force of law. Violations of these regulations are mis-

¹In a seminar under the direction of Dr. Schaper of the University of Minnesota, the leading features and methods of work with reference to a scientific way of assessment were successfully worked out. The students trained in this manner were employed by the Tax Commission as its field agents. The reports and books on taxation collected by the Political Science seminar were loaned to the legislature in accordance with a resolution of the House and later formed the first library of the commission.

demeanors. The local boards of health or health officials must work in accordance with the regulations of the state board or be guilty of a misdemeanor. The duty next in importance is the inspection of the common foods as milk, water, bread and meat. In these matters also the board has almost autocratic powers.

The recommendations made to the legislature are of the utmost importance, notably the one referring to the prevention of pollution of bodies of water, as the board can at present not act until actual pollution has been brought about. Some of the former recommendations of the board have been considered unfavorably by the legislature. One referring to the "transporting of persons for hire in railways and street cars and other public conveyances and the condition of railway stations and railway shops" has been defeated by the senate. There is little doubt that this defeat bears all the ear-marks of the interference of the so-called "interests."¹

Next to public health, ranks, perhaps, public education, and the state has made a notable beginning in the exercise of its police power with reference to schools. The Superintendent of Schools, formerly a mere disseminator of educational information and collector of statistics, now has powers by virtue of which he may demand, to a considerable degree, certain standards of school work. He controls, at present, by a system of compulsory examinations, the qualifications of the rural teachers. By a system of state aids, he demands school work of a much higher character than formerly and, by the same means, he compels proper regard to the sanitation, ventilation, heating appliances and school apparatus. This is plain exercise of police powers by setting up compulsory standards. His authority over teachers does not cease

¹Biennial Report, Minn. State Board of Health, 1909.

with the granting of certificates, as he may revoke for cause any certificate at any time.

It is to be regretted that the state superintendent has only nominal authority over independent districts, for there is no question that in certain matters of vital concern these schools need some supervising authority not of local origin.¹

In 1907 the state enlarged the Labor Bureau and made it a Bureau of Labor, Industries and Commerce, plainly indicating thereby a growing consciousness of its powers of regulation, control and prohibition. The bureau must enforce all the laws regulating the employment of men, women and children, having particular regard to the protection of the health, lives, limbs, rights of the working classes and proper qualifications of persons in trades and crafts. It gathers and publishes information and statistics of interest to labor. The enforcement of the truancy law is also entrusted to its care. And for the purpose of executing its duties, the members of the bureau have free access to all places where men, women and children are employed. Any member of the bureau may issue subpoenas, take testimony, and compel the attendance of witnesses, whom he may put under oath. During the biennial period ending July 31, 1908, the department issued 360 orders to employers, some of which show great advance with reference to the regard for the health, comfort and safety of employees. A St. Cloud concern, for instance, was ordered to provide seats for female employees. The department paid particular attention to the sanitation and ventilation of workshops, especially of bakeries, and to the safety of life and limb of railway employees in ordering numerous defective switching blocks to be removed.

¹Williams, *Laws of Minn.*, relating to Schools and Education, 1907.

In 1907 the State Free Employment Bureau was established and made a part of the Labor Bureau. Sub-bureaus were established in St. Paul, Minneapolis and Duluth, which furnished employment to over 25,000 people. This bureau shows decidedly the change taking place in the conception of the term state. Though still largely of a political content, the term state becomes more and more an economic concept.

A second addition to the Labor Bureau made in 1907 is perhaps still more interesting, namely the Women's Department. Very few persons have any idea of the very large number of women in the industrial world and fewer still realize the rapidity with which this number is increasing. "So marked is the increase that our national government has followed the example of Europe and inaugurated a wide and searching investigation of the general conditions that environ the women and children at work, and many states have appointed Boards of Enquiry as to occupational diseases and the effect this wholesale employment of women will have upon the race. In the teaching profession alone, there were in 1908, 14,430 women in this state."

Equally impressive are the numbers with respect to children. In 1900, the last available authentic figures, there were nearly 17,000 boys between the ages of 10 and 15 in Minnesota that were breadwinners, or almost 15 per cent of the whole number of boys. The respective number of girls was 6,141, or 5 per cent.

The fact that the women of a nation practically determine its fate, makes the problem of the child-woman, the girl from 16 to 20 most serious. Minnesota had in 1900, 83,531 child-women of whom 28,298 were wage-workers, or nearly 34 per cent. This percentage increased to 53.8 for St. Paul, 47.7 for Min-

neapolis and 42.7 per cent for Duluth. To-day the proportion is far greater. Even in 1900 every third girl in the state was a wage-earner and every other girl in the cities. These facts show that some steps must be taken to stem this great wave of girlhood which now pours into the workshops and save it for the homes.

Unfortunately there is a conflict of laws which is disastrous to our girls. The compulsory education act provides that unless minors have attained a certain proficiency in learning, they may be compelled to attend school until 18 years of age, while our labor laws provide that if girls have attained a certain degree of knowledge of books—in practice very much less than that demanded by the compulsory education law—they may enter any industry at 16.

Says Mrs. Starkweather, the inspector in charge of this department: "Because of her inexperience and because of the vast numbers who eagerly crowd for application in every post, she can fill, she is paid less; because of her innocence and the excited curiosity of her immature years, she is confronted with greater temptation, and because of her low pay and her lack of worldly knowledge, she falls most easily a victim to the snares that are laid in her path. Of all the sad phases of women in the industrial world, none is so sad as the presence of the child-woman, and the saddest thing about it, is the rapidity of her increase."

What is especially disheartening is that Minnesota leads all her sister states in the high percentage of child-women in industrial pursuits, having almost 8 per cent more than the average for the whole country. And what is especially to be deplored is the fact that daughters of well-to-do parents are wage workers, competing with the poor girl whose wages she lowers

and whom she, the pet of the family, frequently drives to a life of shame and ruin.

Our clubwomen who have done such noble work in various lines can find no better, no worthier object with which to occupy themselves than the child-woman in industrial life. Clearly if nothing is done in this direction, the time may come when our daughters and sisters and wives will look upon home life as degrading and beneath the dignity of women.¹

But in spite of these depressing facts, there is no reason to despair. Minnesota will do her share of work in the establishment of the modern state. Governor Eberhart proposes to push the police power of the state beyond any limits yet set by any commonwealth. In his propositions for extension of the work of the state board of health, the governor stands in the advance-guard of spokesmen for the modern state. The overthrow of the Dartmouth College Decision "on which depend all the so-called perpetual franchises of monopolistic corporations," has been openly suggested in press dispatches.² Here indeed is hope, for if there was any judicial decision that practically emasculated the sovereignty of the state, it was the Dartmouth College Decision, and if a journal, of the standing of the Pioneer Press advocates, if not openly, at least by way of implication a reversal of that notorious decision, then indeed there is hope and in a few years "*Omnipotens civitas est*" will be a commonplace.

¹Biennial Report, Bureau of Labor.

²Pioneer Press, Nov. 16, 1909.

Third Session



MUNICIPAL ACCOUNTING

THE MAKING OF THE CITY BUDGET

By LOUIS BETZ

In recent years there has been a general awakening of the people throughout the United States to the fact that our Municipal Governments are not conducted on as scientific a basis as they should be. From all parts of our country we hear of civic bodies, taking up and discussing the problems of city government, and before many years have passed, no doubt many of them will be solved. The great difficulty lies in the fact that in the United States we have almost as many different forms of municipal government as we have cities. Our forefathers did not hand down to us any hard and fast rules for the management of cities as they did for the National, State, and County governments. The reason for this is plain; at the time of the adoption of the Constitution of the United States the population thereof was almost entirely rural, only three per cent. of the inhabitants lived in cities of over 8,000 souls. At that time the functional activities of a city were but very few, and the resultant expenditures were small as compared with today. Every house-holder had to furnish his own water and light, dispose of sewage, keep the roadway in repair and do many things that are today done for him by the municipality. The political interest of its citizens was centered in the election of the executive, legislative and judicial branches, the other branches of city government were considered of minor importance.

These conditions existed almost up to the Civil

War, but since then, our cities have grown so fast, and the trend of the people to move from the country to the city has been so strong that today almost thirty-five per cent of our entire population live in cities of over 8,000 inhabitants. There are now in the United States 158 cities that have a population of 30,000 and over, and if the same trend keeps up, ere long, half the people of our country will live in cities, so that in less than a century our population has been changed from a rural to an urban one. This has brought about a great change in political and governmental affairs of our large cities, so that today the fiscal affairs of the municipality have become the most important part of its government; there are constantly new functions and departments taken over by the municipality which steadily increase the annual expenditures. It is therefore of the greatest importance that citizens and taxpayers interest themselves in the manner and procedure with which the annual budget is prepared; the tax rate is high, and seems to be on the increase in all larger cities. The people are becoming restless on account of these conditions, and are looking for some relief, which can only be found in the scientific and economic management of all departments. At the present time there is not very much interest shown by the general public in the process of making a budget. One of the chief reasons for this is, that the public is not in possession of information essential to a clear understanding of the purpose for which money is being voted, nor the relation which appropriations agreed upon bear to appropriations for a like purpose in former years. Much money will be saved to taxpayers in all large cities when Annual Budgets and Reports of Expenditures will be so arranged that the average citizen will understand clearly for what purpose taxes are levied and how they have been expended.

The Annual Budget must contain every item of expenditure that is proposed for the coming year, an estimate of all revenue for the same year, and an estimate of any proposed bond issue. One of its chief features must be a proper arrangement so that it is lucid and complete in every way; especially should all expenditures be classified according to functional activities. There should be no lump sum appropriated for any one department; the expenditures of every department should be worked out in detail, and the law should provide that they be strictly adhered to. Such schedules for the Budget of the coming year should not only show clearly for what purpose each item of expenditure is intended, but should also show what amount has been expended for the same purpose in the first and second years passed and the amount allowed for the current year, so that the Board of Estimate and Apportionment, or such body as is clothed with the power of making the Budget, and the public at large, can intelligently criticise the amounts asked for, and compare the same with previous expenditures.

The Bureau of Census of the United States has adopted for its annual reports on the expenditures of municipalities a schedule of classification which has been approved by all organizations for the improvement of municipal affairs, and is now being used by many fiscal officers in their annual reports. The National Association of Comptrollers and Accounting Officers in their last convention recommended that this same classification be used in the preparation of Annual Budgets. This schedule divides the expenditures of a municipality into ten functional groups with a number of sub-heads; these sub-heads can, of course, be arranged to suit local conditions, but the general divisions will apply to most every city in this country.

They are substantially as follows, with the principal sub-heads mentioned.

I.

GENERAL GOVERNMENT.

- | | |
|------------------------------------|-------------------------------|
| 1 Council and Legislative offices. | 2 Chief of executive offices. |
| 3 Finance offices and accounts. | 4 Law offices. |
| 5 Miscellaneous executive offices. | 6 Elections. |
| 7 Municipal buildings. | 8 Courts, and Court officers. |

II.

PROTECTION OF LIFE AND PROPERTY.

- | | |
|----------------------|-----------------------------|
| 1 Police Department. | 2 Militia and armories. |
| 3 Fire Department. | 4 Miscellaneous inspection. |
| 5 Pounds. | |

III.

HEALTH CONSERVATION AND SANITATION.

- | | |
|----------------------|--|
| 1 Health Department. | 2 Quarantine and contagious disease hospitals. |
| 3 Morgues. | 4 Sewers and sewage disposal. |
| 5 Street cleaning. | 6 Refuse disposal. |

IV.

HIGHWAYS.

- | | |
|-----------------------------------|--------------------------------|
| 1 General supervision. | 2 General street expenditures. |
| 3 Street pavements. | 4 Grading and curbing. |
| 5 Bridges and railroad crossings. | 6 Street sprinkling. |
| 7 Street lighting. | 8 Miscellaneous. |

V.

CHARITIES AND CORRECTIONS.

- | | |
|-----------------------|------------------------------|
| 1 Relief of the poor. | 2 Miscellaneous charities. |
| 3 Hospitals. | 4 Prisons and reformatories. |

VI.

EDUCATION.

- | | |
|--------------|------------------------------|
| 1 Schools. | 3 Art galleries and museums. |
| 2 Libraries. | |

VII.

RECREATION.

- | | |
|---------------------------|------------------------------------|
| 1 Parks and parkways. | 2 Public baths. |
| 3 Children's playgrounds. | 4 Celebrations and entertainments. |
| 5 Miscellaneous | |

VIII.

MISCELLANEOUS.

- | | |
|--------------------------|--------------------------|
| 1 Miscellaneous offices. | 2 Miscellaneous objects. |
|--------------------------|--------------------------|

IX.

PUBLIC SERVICE ENTERPRISES.

- | | |
|-----------------------------|-------------------------|
| 1 Waterworks. | 2 Electric light plant. |
| 3 Markets. | 4 Cemeteries. |
| 5 Institutional industries. | 6 Public halls. |

X.

INTEREST AND PUBLIC DEBT.

- | | |
|------------------------|----------------------------------|
| 1 Interest on bonds. | 2 Interest on other obligations. |
| 3 Redemption of bonds. | 4 Sinking fund. |

If budgets are thus arranged, and proposed expenditures classified accordingly, it will greatly facilitate the making of a proper annual report of the financial transactions of municipalities, containing such

statements which will be comparable with those of other cities using the same classification, making it possible to intelligently criticise the expenditures and establish a proper basis for all disbursements, with the ultimate result of preventing wasteful extravagance.

We have thus far dwelt upon the form and upon the manner in which a budget should be made up; as important as this side of the question is, it is more important to the taxpayer and citizen, that the proper board or body of municipal officers be intrusted with the work of making the budget, and the power of fixing the amount of money that should be spent in the coming year. There are few cities whose rules and laws are exactly alike in this respect, although in the most of them the Common Council has the greatest power in fixing the amount of expenditures for the year. In my home town, the City of St. Paul, the Comptroller makes up a preliminary estimate which he submits to the "Conference Committee"—this committee, after due deliberation, submits its estimate to the Common Council which has the power of making such changes as it sees fit, and adopting the same. The Conference Committee is made up of the Mayor, Comptroller, City Treasurer, two members of the Common Council and eight heads of departments, thirteen in all. It will be seen, that here, the officers under whose jurisdiction the greatest part of the municipal expenditures are made, are in the majority. Although St. Paul has been thus far fortunate in having good and honest men representing the departments on this committee, the system is not a good one. A municipal officer under whose jurisdiction annual expenditures are made, should not have a direct vote in fixing the amount to be so expended.

The duty and power of making the budget and

fixing the amounts to be expended annually, should be vested in the Board of Estimate and Apportionment, and this board, as such, should have no other duties to perform. It should be composed of the Mayor, Comptroller, City Treasurer, two members of the Common Council, and one or two citizen freeholders from each ward who shall hold no other municipal office, the latter to be elected at the regular city elections. In this way the taxpayer would be represented, and would wield the greatest power in deciding what amount of money should be taken from the citizens for the maintenance of the various departments of the government. This board should begin its work two months before the beginning of the fiscal year. It should devise a system of schedules to be used by each of the departments in making their requests for annual appropriations. This department estimate should be so itemized and segregated as to clearly show for what purpose every dollar asked for is to be expended. It should show in one column the amount expended for the various items in the previous year, in the next column the amount allowed for the same items in the current year, and in the third and budget column, the amount requested for the coming year; and this estimate should fully explain the reason for increases or decreases in the items. The laws and ordinances of the municipality should provide that when an item is allowed for a certain purpose, it will be illegal to divert such funds for other purposes; if such laws are rigidly enforced, it will compel departments to make their requisitions to the board explicit in every detail. The board after receiving these requests should thereupon set the dates for a hearing of the different departments, such hearings should be public, and the dates thereof published in the daily papers in advance. After the board has

finished with the public hearings and kept a record thereof, it should meet in executive session and fix the amounts to be allowed each department. They shall also perform such other duties as estimating the probable revenue for the coming year from other sources than the tax levy, and recommending such bond issues as may be necessary. After the board has completed the budget, the same should be transmitted to the Common Council, who shall have the power *only* to *decrease* and not increase any item of expenditure before adopting the same.

As has been mentioned above, no lump sum should be appropriated covering several items, with the possible exception of an amount for miscellaneous and unforeseen expenses, and this amount should not exceed one per cent. of the total budget. And we again reiterate that it is most important that the municipal charters and ordinances should provide that after the budget is once adopted, it shall be illegal for any officer or department head to expend an amount of money or to contract debts during any fiscal year in excess of the amount allowed in the budget.

The plan here outlined or one similar thereto, would have the tendency of tightening the municipal purse strings, and give to the citizen and taxpayer the power to decide how much and in what manner public money should be expended. It is often said that municipal affairs are business affairs and should be handled accordingly;—they are not, they are public affairs, and should be managed in the interest of all the people. A municipal corporation has no profit and loss account, it is a paternal organization. It takes annually from its citizens and taxpayers a certain sum of money, and the duty of its officers is to expend that money in a manner that the greatest benefits will accrue to the greatest number of people that live within its confines.

STATE SUPERVISION OF PUBLIC ACCOUNTING IN MINNESOTA

By F. N. STACY

In order to give you an approximate idea of the volume of business handled by public accountants in the State of Minnesota, I will review briefly the revenues collected for public purposes—state, county, city, village, school, township and special.

The total assessed valuation of real and personal property in Minnesota for the various purposes of direct taxation today somewhat exceeds \$1,100,000,000. The average total tax levy, or rate of taxation, for all public purposes—state, county, city, village, township, and school district—approximates 27 mills on each dollar of assessed valuation. The total volume of taxes levied and collected, therefore, in the state for all purposes is close upon \$30,000,000 per annum. In 1908 it was \$28,732,000. The growth in volume of taxes is shown as follows: \$658,000 in 1861, \$2,783,000 in 1870, \$4,191,000 in 1880, \$13,000,000 in 1890, \$14,963,000 in 1900 and about double that amount will probably be collected in 1910.

But \$30,000,000 by no means represents the total amount of public revenues collected in Minnesota. It does not include the special assessments for local city and village improvements, such as sidewalks, paving, sewer, curb and gutter, or assessments and local rates for water and lighting. It does not include the large volume of local revenue collected by cities, counties, villages and towns for liquor licenses, dog licenses, theater and circus licenses, and for numer-

ous amusements and entertainment purposes. It does not include the great volume of public revenue received by the state government, which is not derived from direct taxation but from gross earnings, taxes, corporation fees, and sales and leases of public lands and other property. For example, the state receives about \$4,000,000 a year from taxes on the gross earnings of railroads, telephone, express and other public service corporations; \$100,000 from inheritances, vessel tonnage and a special tax on liquor licenses; \$375,000 from taxes on insurance companies; \$800,000 from sales of state timber and from mineral leases and royalties on iron ore; \$700,000 from departmental earnings, fees, fines and miscellaneous receipts; \$1,200,000 from sales of binder twine manufactured at the state prison; \$750,000 from interest on bonds, land contracts and daily balances in banks of deposit; and other receipts for various permanent funds, bringing the aggregate revenues of the state government and state institutions up to approximately \$13,000,000, of which only one-fourth is raised by the direct state and school tax on property valuation. There is also a large volume of public revenue raised annually from sales of state, county, city, village, school district and ditch bonds, and certificates of indebtedness for improvement and other purposes.

The aggregate volume of public revenue collected and disbursed for all purposes in the State of Minnesota, therefore, is not less than \$50,000,000 per annum, and may approximate \$60,000,000, and all of this must be properly accounted for. But the volume of revenue above named gives only a faint idea of the amount of accounting involved. To begin with, this volume of receipts may pass through numerous hands, state, county, and municipal, before reaching its final destination; and then again, the various accounts and

vouchers connected with this volume of revenue as public receipts are duplicated when the revenue is disbursed. It is therefore plain that the public accountant in Minnesota has a wide field. Besides the bookkeepers for all the various public offices and institutions, there are the accountants who devise the accounting systems, and the experts who examine and check the books, and verify the balances on hand, or ascertain the balances which should be on hand, and see that these funds are properly safeguarded.

Minnesota does not need to look far to see the value and necessity of an accurate and scientific system of accounting. Nearly every county, city, village and school district has local experience of one kind or another of its own, and nearly every state institution and department at one time or another, has had some demonstration of the evil of loose accounting; although, I am glad to know, that Minnesota's record on the whole compares very favorably with that of other states. The county of Hennepin has had its defaulting treasurer and sundry minor offenders in local accounts, and the city of Minneapolis has had its defaulting city treasurer and various lesser officials gone wrong in their accounts or in their lawful official duties otherwise. Prior to the special act of 1891, which placed the city of St. Paul under the supervision of the state public examiner, St. Paul had a serious embezzlement in its city treasury and a bad accounting and financial condition generally, from the results of which the city taxpayers are still suffering and are having to issue each year certificates of indebtedness with attendant interest loss because the city is one year behind in raising its annual revenue by taxation. The state has met with large losses of timber, mineral and other land properties through insufficient system in checking and regulating its

property and accounts. The Mountain Iron mine, valued at \$15,000,000, once a school section belonging to the public schools of Minnesota, and now a U. S. Steel asset and one of the greatest of its kind on the globe, is a case in point; and the timber deprecations and looseness in sales and leases of timber and mineral properties, which resulted in a political revolution in state government in 1904, and the election of John A. Johnson three times as governor, are striking instances of bad system in safe-guarding and protecting the titles and public interest in the state's public land department.

One of the most interesting examples of loose accounting, of which I have personal knowledge, is that of this city, which was brought to public attention by the action of the city council in 1903. The council committee on public accounts employed me to make an investigation to ascertain what had become of a certain city fund known as the "Permanent Improvement Revolving Fund." The fund had been started something like fifteen years before by the sale of bonds, the proceeds of the sales of which had netted the city something like \$1,250,000. This fund was used to meet the first cost of paving, sewer, curb and gutter improvements; the benefitted abutting property being supposed to pay the cost back to the city in five equal annual installments, thereby keeping up the fund and making it what its name implies, a "permanent improvement revolving fund." But when the city fathers had mapped out their spring improvements for paving, sewer, curb and gutter for the several wards and even had taken the initial steps to put through the work, they were suddenly called up short by the announcement of the city comptroller and treasurer, that there was no money in the revolving fund. So the city council wanted to know where the \$1,250,000 had

gone. The comptroller admitted he could not tell them, and the treasurer did not know; they had no account of special assessments they maintained. The city fathers "wanted to know," and so they called me in as an independent outside accountant.

The city council's resolution, which authorized the investigation in which I was engaged, stated, as regards the condition of the revolving fund: "There is a deficit of \$260,000." The comptroller's report showed that in lieu of a credit balance of about \$1,250,000, there was a deficit of \$15,230.61. I found, however, that in unpaid special assessments and delinquent payments there was a collectable asset of about \$650,000; leaving a shortage of about \$500,000 to be accounted for. The trouble was due to the fact, in part, that no city comptroller had exercised his authority granted to him under the city charter to open a properly balanced special assessment account, and second, that the city's entire accounting system, if worthy of the name of system, was inefficient and insufficient for a city of the size and volume of business of Minneapolis. The system, such as it was, had been devised twenty years before, when the town was small, and had outgrown its usefulness. I found that part of the missing \$500,000 had gone astray into other city funds, that some had got stuck among the wheels and cogs and ceased to revolve, that some possibly had been lost through petty graft, and that a large bunch of it had been wrongfully diverted in the shape of rebates secured by special agents for themselves and client taxpayers.

If further evidence were required to prove the necessity of installing a new and up-to-date accounting system, that evidence was furnished by the way the so-called "Haugan Account" was handled—the unsettled account of the former defaulting city treasurer. In the spring of 1903, when I was at work on the city

comptroller's books, there stood charged to A. C. Haugan, former city treasurer, the gross sum of \$562,-961.10, as the amount of his original shortage, afterwards cut down about half to \$268,913.14 after the city had realized on sundry assets held by Haugan and turned over to the city. Haugan had been re-elected city treasurer in 1896, but resigned on Jan. 23 following, because unable to secure the necessary bondsmen. His successor was not elected until March 18 following. Strangely enough, the comptroller's ledger and trial balance showed at this time, not \$562,000 as the amount in the treasurer's hands, but \$429,000. So loose was the system, that it was possible for the city treasurer to get from the county auditor's office warrants on the county treasurer for money, months in advance of the legal date of settlement between city and county, and apparently accomplish this result without the record, and perhaps without the official knowledge, of the city comptroller's department. In looking through old warrants, I discovered that Haugan had been allowed to draw on the county treasurer, apparently for personal and political purposes, even in advance of tax collection, in some instances, and often in advance of the legal day of settlement between city and county. During the six weeks prior to the election of 1896, he had been allowed to draw heavily upon the county, the county auditor's warrant being signed not by the auditor himself, but by a subordinate. The sums thus drawn had been deposited by Haugan in two banks of which he was president, and then loaned out to political friends. Haugan had thus become a scapegoat of his political organization and so-called "friends."

One of the striking entries on the city comptroller's ledger after Haugan's resignation was the sum of \$80,671.12 charged as having been received by him

six weeks after he had finally retired from office and his successor elected and qualified. This entry, of course, was one that should have been made several months before, and shows what lack of system, to say the best, was in vogue in the city finances under the old regime. There is little doubt of Haugan's official guilt on a more or less large scale; but at the same time it should be said to his credit, that he himself was one of the least of the real beneficiaries. He was "an easy mark" and a scape-goat of his political associates and "friends," who afterward used their influence, as a partial return, to get him a light sentence of four months in the county jail, before he retired to a country town to die of grief and shame.

In the examination on which I was employed by the city, I was handicapped by the fact, first, that the city had almost no fund available to maintain the investigation; second, that belonging to a political party of the opposite complexion of that in power in City Hall, I was obstructed at every step in getting access to the proper records, and sometimes had to appeal to the city attorney; and finally, was furnished no expense fund for visiting other cities to consult accounting methods for the proper handling of the city's special assessment and other funds. The total available fund at the command of the city council for accounting purposes to support my work was \$300, the whole of which I turned over to my lone assistant, Edward Ekman, who aided me for the period of 50 days for the salary of \$6 per day. For my own time of upwards of five months, there was no money in the council's available fund, and I have received nothing to this day. Moreover, finding it necessary to visit the cities of Chicago, New York, Boston, Buffalo, and Detroit to examine their special assessment systems and secure plans and suggestions for the city, I expended \$300 out of my

own pocket for expenses without remuneration at the hands of the city. In assuming that the city would be grateful for the practical benefits to be derived and would do what was right in the premises, I had occasion to learn that what is the public business is nobody's business, and that he who works for the public has the satisfaction of having done his duty, and a satisfaction that is supposed to be so ample that no further reward is deemed necessary.

My trip East was of great value. There I became acquainted with the Boston expert, Harvey S. Chase, who was chief consulting accountant in the installation of Ohio's uniform municipal accounting system, in devising Chicago's new accounting system installed by Haskins & Sells in 1902, and who the following year was likewise consulting accountant in the installation of the new system in Minneapolis by Jones & Caesar, as the result of my investigation and report. The most notable experience in my Eastern trip was a study of the results of the new Chicago system. To overhaul thirty years of old accounts and install the new system had required the labor of an army of accountants a year and cost the city of Chicago \$1,000,000. But look at the results. Upwards of \$1,500,000 was unearthed and collected from those who had profited by bad accounting, favoritism and graft. Something like \$1,800,000 was restored to taxpayers, representing erroneous and illegal assessments and taxes, and the cost of city administration was reduced by the elimination of political favoritism and graft, and by the substitution of a more simple and efficient method of doing business, so that the city tax levy was reduced the next year after the installation of the new system \$3,000,000.

The new Minneapolis system was installed in 1904-5, and the legislature adopted an act placing the city of

Minneapolis under the supervision of the public examiner. Although possible of improvement in some respects, especially in the direction of simplicity, the new system has worked well and led to excellent general results. The only work which Minneapolis passed over undone was the thorough overhauling of old funds and accounts and placing its finances on a clean and sound foundation from the bottom up through the entire superstructure. The old rottenness will not be completely absorbed and out of the city's accounting system for many years to come. For example, as a result of the unlawful changing of special assessment charges—something like 2,000 illegal changes having been cited in my report of July 1903—there is liable to be future litigation and tax complications. Again, the tax rebate system, which has resulted in collusion between public employes and interested parties, is still a thorn in the side of efficient and clean public accounting and taxation.

As an official check on public accounting in Minnesota, and likewise as an aid to the development of a scientific public accounting system, the State has created a department for the supervision of public accounts that of Public Examiner with which I have the honor to be connected as chief deputy. Directly or indirectly, the public examiner has supervision over state, county, municipal and corporate accounts, which in the aggregate cover perhaps 90 per cent of the total volume of public revenue collected and disbursed at this time within the state. The public examiner is required by law to examine and exercise supervision over the accounts of the following:

All State offices and institutions including boards and commissions.

All county offices and institutions.

The cities of St. Paul and Minneapolis.

Cities of less than 10,000 inhabitants, on request of city council, following petition of ten freeholders.

Towns and school districts, on request of county commissioners, pursuant to petition of freeholders.

Earnings accounts of all corporations paying taxes on gross earnings.

For this purpose, the State provides the public examiner an office and field force of a dozen people, and a fund of about \$35,000 a year for salaries and expenses. This force and fund are far too small to permit him to efficiently perform his duties as required by law. An immediate increase of one-half in number of examiners and fund for salaries and expenses is necessary to maintain the department on a basis of efficiency; and for each dollar expended for maintenance, the department will show two dollars returned to public treasuries, not to mention the still greater effect in preventing loss of public revenue and bringing about economy and efficiency in public departments.

As showing how well the department of public examination pays the state, the amount collected and restored to state, county and other public treasuries during the two years ending with the fiscal year, July 31, 1908, was upwards of \$160,000, whereas the entire cost of the department for salaries and expenses during that period was under \$75,000. The state was therefore a net beneficiary to the extent of \$85,000 in sums recovered, to say nothing of the moral effect of public examination of accounts and the benefits from accounting improvements and economy and efficiency of public business. Notwithstanding this excellent showing the legislature could not be prevailed upon to give the department an appropriation necessary to the employment of badly needed help; and at least one-third of the work now demanding expert atten-

tion must stand in abeyance until proper legislative aid can be secured to enable the state to safe-guard its funds and property.

Among the urgent needs of the state government at this time is the thorough overhauling and examination of its public land accounts from the early history of the state down to date. Although I am not officially authorized, perhaps, in making this announcement thus informally at this time, I will assume the authority to say this much, that the discrepancies between the state and general government land accounts, I am satisfied by preliminary examination thus far made, reaches many thousands of acres, even in the receipts of lands by Minnesota from the general government. These discrepancies may arise from clerical errors on the part of either the state or the general government, or favoritism or graft in Washington or Minnesota may be involved; but at any rate the property of the state to the extent of perhaps large amounts may be involved, and it is the duty of the state to check out its land account without delay. This investigation should include not only receipts of land by patent from the government, but the sales to private parties. Both public funds and private titles may be involved. The examination will take several accountants a period of two or more years; but when it is through, the state will have a much better knowledge of the condition of its greatest asset, its public lands, including its mineral and timber properties.

It is estimated that the state has an asset, largely in the lands belonging to its schools and university, that will yield a future income of \$100,000,000. This asset, however, has never been checked and verified in the state's history. The only thorough-going examination ever undertaken by the public examiner's department, of the state properties in hands of the

state auditor as ex-officio land commissioner, was of timber stumpage by former examiner S. T. Johnson and assistants in 1904. The discrepancies exposed by that examination are part of the state's political history. But the timber stumpage is the least important of the state public land assets. From what experience I have had in examination of the current land accounts of the state auditor and of the state university and its trust, the natural history and geological survey, I would be willing to guaranty that the examination would be worth to the state all and more, at the least calculation, than the cost of the examination.

Another subject of state examination to which the attention of the last legislature was called in vain is that of the tax collection account between the state and the respective counties. County treasurers and auditors are agents of the state in the collection of taxes and sales of properties to meet delinquent taxes. The state auditor has on his ledger a total of something like \$2,500,000 charged up to the various counties of the state, as an asset due the state from counties in connection with tax collections, sales and forfeitures. The state auditor charges the county with the amount of the state's tax levy in and for a given county, and credits the county with the tax collections returned. The difference of something like \$2,500,000 outstanding represents an asset of unknown value which has never been checked up between state and counties. Both the state auditor and the public examiner recommended a small appropriation to enable the public examiner's department to check up the tax accounts of the various counties and adjust the discrepancies; but the legislature went no further than to introduce a bill to employ a private accounting firm to undertake the job for a consideration. When I went before the senate committee in charge and

showed them that the regular state departments could do the work for one-fifth the cost that the private corporation expected to realize, the senate killed the bill, but made no provision for the accomplishment of the work by the state.

Since the adjournment of the last legislature, our department has put into state, county, and city treasuries further sums amounting in the aggregate to perhaps double the cost of maintaining the department. Railroad, telephone, state and county examinations of the past twelve months have saved and recovered into public treasuries somewhere between \$60,000 and \$75,000; but when it comes time to report these findings to the legislature and ask for help sufficient to adequately undertake further work outstanding and undone, the department will find a hard fight on hand, the opposition being promoted by the interests and persons whose accounts are the subject of investigation and by those who have been compelled to fatten the public treasury. It is therefore with great pleasure that I have accepted your invitation to address you on this occasion, and my excuse for using so much of your time is the benefit which I anticipate from publicity of public accounts through your co-operation.

Fourth Session



**COMMISSION FORM OF
GOVERNMENT**

THE COMMISSION PLAN OF GOVERNMENT

By BENJAMIN F. SHAMBAUGH

It is quite unnecessary at this time and before this audience to sketch the social, economic, and political conditions which in the last two decades have made good city government a vital civic problem and which in our day have stirred so many of our citizens to a serious consideration of the reorganization and reformation of municipal institutions. Nor is it desirable, on this occasion, that I should review in detail the developments in our country's history which have led to these conditions.

With the general history of our country and the political record of our cities from New York to San Francisco and from Minneapolis and St. Paul to New Orleans, we are all more or less familiar. Of parts of that record we are heartily ashamed. Conscious of shortcomings, we are now ready to frankly acknowledge our political failures. Knowing that as citizens we have neglected our city governments we are now repenting and seeking after salvation. The revival is upon us, and we are willing to be converted. Just now we are not trying to shirk our responsibilities as citizens. We are not looking for apologies and excuses. At the present hour we are eager for the light of political wisdom and are prepared to take action accordingly.

Moreover, it is true that as citizens we do not wish to be deluged with historical and statistical information. Neither do we care to have our minds befogged with philosophical speculation. Good city

government—that is, an honest and efficient administration of our municipal affairs—is our goal. And we are not concealing our eagerness to learn the shortest road to reach it. Indeed, it is our very impatience that may cause us to stumble.

For in political evolution the shortest road is not always the surest. Whether in the making of planets, the making of species, or the making of governments, evolution—the only process by which real progress is accomplished—is elaborately and painfully slow. In referring to this fundamental truth I do not wish to be misunderstood. I have no desire to dampen the enthusiasm of the reformer or discourage the activities of the agitator. I simply want to remind you of the fact that the reformations in governmental organization that stick are outgrowths of the actual political experiences of society and are in line with the undercurrents of social and political life. The road to political salvation is a long one. Generations of men are but relays in the course.

THE REORGANIZATION OF STATE GOVERNMENTS

The wide-spread, keen interest in the reformation of city government throughout the United States today is a reminder of the era of the reorganization of our State governments occasioned by the separation of the Colonies from England in the eighteenth century. Then, as now, many minds were engaged in the work of recasting governmental institutions. Moreover, the products of those eighteenth century efforts were altogether successful and satisfactory because the work of the reformers was based upon actual political experience. For fully a century and a half the pioneers in this western world had been developing political institutions. Neglected by the mother country, the Colonies were fortunately free to grow such

forms of government and methods of administration as were best suited to their peculiar conditions.

And so the republican institutions outlined in the First State Constitutions were in no sense new. Indeed, there is probably not a single principle of government in those first drafts of fundamental law which had not been drawn from previous experience or experiment in America. The reformers of State government in those days were not political plungers. They were evolutionists in government—not revolutionists. Their reforms consisted simply of the readjustment of political institutions to the altered conditions resulting from the Declaration of Independence.

Unconsciously recognizing democracy as the undercurrent in American life, the constitution-makers of the eighteenth century organized State government in such a way as to make possible the expression of the will of the people through the forms of representative government. And all this was done quietly and without the aid of "booster" committees.

Furthermore, these pioneer reformers of the eighteenth century recognized the fundamental truth that forms of governmental organization are not absolute but relative. And so they opened the way for the continuous readjustment and reformation of government through the peaceful process of amendment—a process of growth that has been very effectively supplemented by judicial interpretation. Thus our State governments have been constantly undergoing changes—but so quietly that the citizen is hardly aware of the transformations that are taking place.

From the reformers of State governments the present-day reorganizers of municipal government may, I believe, learn with profit these lessons:

First. Good governments like good men are constantly undergoing reformation.

Second. There is no such thing as a perfect or final form of government. As history is rewritten by every generation, so governments are reformed by every generation.

Third. Sane political reorganization and reformation are always based upon experience—each step taken in the process being the logical outgrowth of what preceded.

Fourth. Those reforms alone are of permanent value which are in harmony with the undercurrents of the social and political life of the people.

THE NEW CONDITIONS

Since the era of constitution-making, to which reference has just been made, profound changes have taken place in the social, economic, and political life of our people. Moreover, it is a significant fact that with these changes the forms of municipal government have not kept pace. There has been a massing of population in centers large and small. Steam power, electric power, and the development of gigantic industrial institutions have been powerful agents in increasing the proportion of city-dwellers. The influence of artificial light—the use of which has really transformed night into day in our cities—has been too little observed.

In 1789 there were probably not more than six cities in the United States having a population of 8,000. Since 1790 the city-dwellers have increased from 132,000 to over 25,000,000. In 1790 the largest city (which was Philadelphia) in the United States had a population of 28,500. In 1900 Greater New York had a population of nearly 3,500,000. About one-third of our people now live in cities of 8,000 or over. In 1900 there were twenty-five cities having a population of over 133,000.

Along with this phenomenal increase in urban population there has been an exhibition of many extremes: wealth and poverty, luxury and squalor, glut-tony and starvation, sanitation and disease, art and mud, purity and corruption, honesty and bribery, self-sacrifice and greedy graft, charity and selfishness, public spirit and cowardly indifference, good government and bad government. The record is inconsistent, confusing, unsatisfactory—if not positively disgusting.

But we are an optimistic people; an energetic, industrious, serious-minded people; an intelligent, resourceful, capable people; and for the most part we are an honest people. And so, being a people not altogether lacking in civic pride and patriotism, we have set about sensibly to clean up our cities and remedy our municipal administration.

On the one hand, in true American fashion, we resorted to State legislation for relief. For if there is anything that has become a fetish in American politics it is this faith in the remedial power of statute law. The morals of cities were to be restored through law. The earlier special acts gave way in time to general legislation. But legislative meddling whether through special acts or general laws has failed to accomplish the necessary reforms.

At the same time the reformers set about to re-organize the form of city government. The council plan, originally borrowed from England, was discarded and a tri-partate system copied from American State and Federal constitutions, was substituted. Next a system of special boards and commissions was introduced. Then followed a tendency to shift power and responsibility to the mayor. And finally the so-called Commission Plan is offered as the solution of the vexing problem.

Now it is claimed that the Commission Plan of city government had a counterpart or a precursor in the New England Town Meeting where a small body of selectmen, chosen by the electorate, acted as the town commissioners. The search for precursors is always interesting and sometimes amusing. One might suggest that the "political rings" of our cities in more recent times were the forerunners of the Commission Plan since in these self-chosen "rings" centered all real political power and responsibility. By adopting the Commission Plan, are we not simply legalizing the politicians' scheme of government?

THE GALVESTON PLAN

The great storm of 1900 which wrought so much destruction on the Gulf shore left Galveston, Texas, a bankrupt city. Heroic measures being necessary, a new charter was granted in 1901 which inaugurated "government by commission." The old form of organization was swept away and the administration of the city was vested in five commissioners, two of whom were elected by the people and three appointed by the Governor of the Commonwealth. An amendment, in 1903, necessitated by a decision of the Supreme Court of the State, provided for the election by the voters of all of the commissioners.

As thus amended the Galveston charter "provides for the popular election, every two years, of five commissioners, one of whom is given the title of mayor-president. All are elected at large. The mayor-president is the presiding officer of the commission, but otherwise has no special powers. By a majority vote of five commissioners all municipal ordinances are passed, and all appropriations are voted, the mayor-president having no right to veto either absolute

or qualified. The commissioners likewise, by majority vote, apportion among themselves the headships of the four main departments of civic administration, namely, finance and revenue, waterworks and sewerage, police and fire protection, and streets and public property; the mayor-president having no special department, but exercising a general coordinating influence over all. A single commissioner is, therefore, immediately responsible for the administration of each department. The commission as a whole draws up and passes the annual budget, awards all contracts, and makes all important appointments. Minor appointments are made by the individual commissioners each in his own special department. There is throughout a complete centralization of all powers, legislative and administrative, and a very definite location of all responsibility.”¹

Of the success of the Galveston government, we have emphatic and unqualified assurances. We are told that the “financial condition of the city has been most decidedly improved; all the municipal services have been brought to a much higher point of efficiency; a better grade of citizens has been willing to seek and accept civil office; and the general tone of municipal administration has been very noticeably raised. The commissioners present, in their reports, such a convincing array of facts that it would be idle to question the success of the new regime. The success has been attributable in general to three or four canons of policy, from which the commissioners have not swerved during the last five years, and which may be summed up as (1) the use of approved business methods in civic financing; (2) the entire elimination

¹Munro's Galveston Plan of City Government, in the Proceedings of the Providence Conference of the National Municipal League, 1907.

of all leakages in expenditures; (3) the making of all appointments on the basis of individual efficiency; and (4) the strict accountability of each commissioner for the ongoings of his own department."¹

That the people of Texas have gained rather than lost faith in the system which was inaugurated at Galveston in 1901 is seen in the fact that eleven other cities have adopted the plan—Houston in 1903; Dallas, Fort Worth, El Paso, Denison, and Greenville in 1907; Austin, Waco, Marshall, Palestine, and Corpus Christi in 1909.

Nor are the converts to the commission doctrine confined to the independent citizens. Not infrequently is the faith embraced by old line politicians. Judge Fisher, the recently elected mayor-president of Galveston, a man who, we are told, belongs to the political machine which was relieved of responsibility when the new charter was instituted, declares in an interview: "I have at all times believed, and still believe, in the commission form of government. The people of Galveston may rest assured that, by no act of mine, will the commission form of government be disturbed."

It is also worthy of note that by a recent act of the Texas legislature it is now possible for cities of less than 10,000 inhabitants to organize under the commission plan. Nor are there advocates wanting who would extend the system to the general government of the state.

THE DES MOINES PLAN

It is a long cry from Texas to Iowa; but in the study of government by commission we proceed na-

¹Munro's Galveston Plan of City Government, in the Proceedings of the Providence Conference of the National Municipal League, 1907.

turally from Galveston to Des Moines. Indeed, during the last two years the Des Moines Plan has quite overshadowed the Galveston Plan in popular discussions. This is due partly to the intrinsic merits of the plan and partly to the judicious advertising of the Des Moines "boosters." As a matter of fact, the Des Moines Plan is simply a later edition of the commission plan, or it is the Galveston Plan revised and perfected—perfected especially along the lines of the newer forms of institutional democracy. Indeed, it is in this respect that the Des Moines Plan is a decided improvement upon its precursor.

Having been originally brought forward and urged by the people of Des Moines—the largest city in the State of Iowa—the system of government by commission has by act of the General Assembly been extended to all cities of the first class having a population of 25,000 or over. Briefly stated the Des Moines Plan provides for the administration of the affairs of the city by a council consisting of a mayor and four councilmen, who by statute are vested with "all executive, legislative and judicial powers and duties now had, possessed and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, solicitor, assessor, treasurer, auditor, city engineer, and other executive and administrative officers in cities of the first class."

Furthermore, the executive and administrative powers and duties are distributed among five departments designated respectively as: department of public affairs; department of accounts and finances; department of public safety; department of streets and public improvements; and department of parks and public property. And each member of the council is required to serve as superintendent of a department.

The members of the council are chosen by the electorate of the city. But all other officers and assistants (including a city clerk, a solicitor, an assessor, a treasurer, an auditor, a civil engineer, a city physician, a marshal, a chief of fire department, a market master, a street commissioner, and three library trustees) are elected or appointed by the council and subject to removal at any time by the same authority. It is also provided that the council shall appoint three civil service commissioners, who, under the direction of the council, are required to perform the usual duties prescribed for such civil service commissioners.

Turning now to the newer institutional forms of democracy as provided in this plan of municipal government, the following deserve mention:

1. Upon the petition of twenty-five per centum of the voting electorate, the Des Moines Plan of government is submitted in cities of the first class to a direct vote of the people for adoption or rejection. And similarly upon petition a vote may be secured upon abandonment of the plan at any time after it has been in operation for six years.

2. The mayor and four councilmen are nominated at a general non-partisan primary election, that is, they are nominated by the electorate at large at a primary election in which ballots are used containing no party marks whatsoever. And these same officers are elected biennially at large, that is, on a general ticket.

3. The members of the council may be removed or recalled at any time by the electorate. For it is provided that upon the petition of twenty-five per centum of the voting electorate the question of the removal of the incumbent of any elective office is submitted to a direct vote of the people.

4. Proposed ordinances may be submitted to the

council through petition from the electorate ; and such proposed ordinances, if not passed by the council, are submitted without alteration to a direct vote of the people. Furthermore, ordinances proposed by petition or which have been adopted by a vote of the people may not be repealed or amended except by a vote of the people.

5. No ordinance passed by the council (except in certain cases particularly mentioned) "shall go into effect before ten days from the time of its final passage"; and if, during said ten days, a petition signed by at least twenty-five per centum of the voting electorate is presented to the council protesting against the passage of such ordinance the same shall be suspended from going into operation and it shall be the duty of the council to reconsider such ordinance, and if the same is not entirely repealed it shall be submitted by the council to a direct vote of the people.

6. "Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract or granting of any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption." Moreover, "every franchise or grant for interurban or street railways, gas or waterworks, electric light or power plants, heating plants, telegraph or telephone systems or other public service utilities within [the] city, must be authorized or approved" by a direct vote of the people.

7. All meetings of the council at which any person not a city officer is admitted shall be open to the public.

8. The council is required each month to print in pamphlet form for distribution a detailed itemized statement of all receipts and expenditures of the city along with a summary of its proceedings during the preceding month. And at the end of each year the council shall provide for a complete examination of all books and accounts of the city by competent accountants and shall publish the results of all such examinations.

Thus it is seen (to summarize) that in the Des Moines Plan of city government the democratic idea of government in accord with the will of the people has been institutionalized by *first* centralizing all powers and authority in a council of five men and *then* making that council directly responsible and accountable to the electorate for the faithful performance of their duties in accordance with the desires of the people through these newer institutional forms of democracy, namely:

1. The non-partisan primary.
2. The election of officers at large, i. e., on a general ticket.
3. The recall.
4. The initiative.
5. The referendum.
6. The veto or protest.
7. The publicity of all business.
8. The expert examination of all books and accounts.

Four cities in Iowa—Des Moines, Keokuk, Cedar Rapids, and Burlington—have adopted the new plan in accordance with the statutory provisions. In Des Moines and Cedar Rapids—the only Iowa cities thus far with experience under the plan—the results are declared to be quite satisfactory. Genuine reforms have been inaugurated in both places. There seems

to be more enthusiasm over the plan in Des Moines; but this may come largely from the commercial club and the "booster" committee. For the first year the following results have been claimed:

"1. There is an annual surplus instead of the usual deficit.

"2. Service is not only more economical, but more efficient.

"3. Streets have been kept clean.

"4. Paving has been laid according to contract.

"5. Contracts have been let to the lowest bidders.

"6. Police department is no longer a political asset.

"7. Fire department is no longer part of a political machine.

"8. Government has been placed upon a business basis.

"9. Business arrangements have been made with public service corporations with immense profit to the city.

"10. Water rates have been reduced.

"11. Cost of street lighting has been reduced.

"12. Negotiations are on for profit-sharing arrangements with the street railway corporation.

"13. The 'red light district' has been wiped out.

"14. The 'bond shark' business has been prohibited.

"15. Slot machines have been driven out of the city.

"16. People are satisfied with the new form of government and opposition to it is disappearing.

"17. Partisan politics have been removed from the management of the affairs of the city.

"18. The city hall has been cleared of political loafers and grafters and now resembles the business

headquarters of a large commercial or industrial institution." ¹

Altogether, seventeen States and one Territory have made possible the reorganization of cities on the Commission Plan. These States are: California, Colorado, Idaho, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico (Territory), North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, and Wisconsin. And in these states the following cities have taken advantage of the opportunity to inaugurate commission government: Ardmore, Oklahoma; Austin, Texas; Berkeley, California; Bismarck, North Dakota; Boise, Idaho; Burlington, Iowa; Cedar Rapids, Iowa; Chelsea, Massachusetts; Colorado Springs, Colorado; Corpus Christi, Texas; Dallas, Texas; Denison, Texas; Des Moines, Iowa; El Paso, Texas; Fort Worth, Texas; Galveston, Texas; Gloucester, Massachusetts; Greenville, Tennessee; Haverhill, Massachusetts; Houston, Texas; Hutchinson, Kansas; Independence, Kansas; Kansas City, Kansas; Keokuk, Iowa; Leavenworth, Kansas; Lewiston, Idaho; Mandan, North Dakota; Marshall, Texas; Memphis, Tennessee; Minot, North Dakota; Palestine, Texas; Rosewell, New Mexico (Territory); San Diego, California; Sioux Falls, South Dakota; Tulsa, Oklahoma; Waco, Texas; Wichita, Kansas.

On the whole, I believe that the Commission Plan is an improvement in the form of city administration and that its widespread adoption will further the interests of good city government in the United States. In my judgment, the Commission Plan is the best form of government thus far devised by the American people for the administration of municipal affairs. But when I have said this much I do not wish to be understood as saying that the Commission

¹Oskaloosa Daily Herald, April 6, 1909.

Plan is a perfect or final form of municipal organization or that it points the way to certain salvation. For after all, forms of organization are comparatively unimportant in political reformation. The people who make the organization, choose the magistrates, and determine the ideals of public service and civic conduct—they are the only vital factor in the process. My own view in these matters is best expressed by William Penn, who, more than two centuries ago, wrote in the preface to his 1682 Frame of Government of Pennsylvania, the following:

“For particular *frames* and *models*, it will become me to say little; and comparatively I will say nothing. My reasons are:

“*First*. That the age is too nice and difficult for it; there being nothing the wits of men are more busy and divided upon. It is true, they seem to agree to the end, to-wit, happiness; but, in the means, they differ, as to divine, so to this human felicity; and the cause is much the same, not always want of light and knowledge, but want of using them rightly. Men side with their passions against their reason, and their sinister interests have so strong a bias upon their minds, that they lean to them against the good of the things they know.

“*Secondly*. I do not find a model in the world, that time, place, and some singular emergencies have not necessarily altered; nor is it easy to frame a civil government, that shall serve all places alike.

“*Thirdly*. I know what is said by the several admirers of *monarchy*, *aristocracy* and *democracy*, which are the rule of one, a few, and many, and are the three common ideas of government, when men discourse on the subject. But I chuse to solve the controversy with this small distinction, and it belongs to all three: *Any government is free to the*

people under it (whatever be the frame) where the laws rule and the people are a party to those laws, and more than this is tyranny, oligarchy, or confusion.

"But, lastly, when all is said, there is hardly one frame of government in the world so ill designed by its first founders, that, in good hands, would not do well enough; and story tells us, the best, in ill ones, can do nothing that is great or good; witness the *Jewish* and *Roman* states. Governments, like clocks, go from the motion men give them; and as governments are made and moved by men, so by them they are ruined too. Wherefore governments rather depend upon men, than men upon governments. Let men be good, and the government cannot be bad; if it be ill, they will cure it. But, if men be bad, let the government be never so good, they will endeavor to warp and spoil it to their turn.

"I know some say, let us have good laws, and no matter for the men that execute them: but let them consider, that, though good laws do well, good men do better; for good laws may want good men, and be abolished or evaded by ill men; but good men will never want good laws, nor suffer ill ones. It is true, good laws have some awe upon ill ministers, but that is where they have not power to escape or abolish them, and the people are generally wise and good; but a loose and depraved people (which is the question) love laws and an administration like themselves. That, therefore, which makes a good constitution, must keep it, *viz.*: men of wisdom and virtue."

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